64
1

SUPREME COURT OF THE UNITED STATES.

No. ~~150~~ 1 1.

THE UNITED STATES, APPELLANTS,

vs.

THE GUADALUPE MINING COMPANY.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington, D. C.

Library of the Museum
of Comparative Zoology

159

SUPREME COURT OF THE UNITED STATES.

No. 159.

THE UNITED STATES, APPELLANTS,

vs.

THE GUADALUPE MINING COMPANY.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Petition	2	1
Exhibit "M." (Conveyance)	5	3
Exhibit "P." (Conveyance)	14	7
Exhibit "O." (Conveyance)	17	8
Deed—Grove C. Cook to Wm. Wiggins	20½	10
Agreement—Wm. Wiggins with Weller & Jones	24	12
Transfer—G. C. Cook and wife to Wm. Wiggins	26	13
Deed—Wm. Wiggins to Weller & Jones	29	14
Agreement—Wiggins and Jones & Weller	33	16
Affidavit of H. Laurencel	37	17
Agreement	38	18
Stipulation	38	18
Deposition of Antonio Ma. Pico	39	18
Deposition of Antonio Sunol	42	20
Deposition of Anto. Sunol, (in 340)	45	21
Expediente, Capitancillos, "A"	46	22
Map of Capitancillos	49	23
Los Capitancillos, "B." Translation	52	24
Los Capitancillos, "B." Grant annexed to deposition of Antonio Sunol	57	27
Los Capitancillos, "D." Transfer of grant	59	28
Original deed—Justo Larios to Grove C. Cook	62	29
Translation of the above original deed	64	31
Opinion of the board	66	32
Decree of confirmation	69	34

GIBSON, Print.

	Original.	Print.
Order	72	35
Notice of appeal	74	35
Petition	75	36
Answer	76	37
Stipulation to admit depositions taken in No. 132	77	37
Certified copy of the deposition of Pedro Chevoya	78	37
Deposition of Jose Fernandez	83	40
Deposition of Nazarie Galindo	86	42
Deposition of Jose Sepulveda	89	43
Deposition of Miguel Narvaez	90	43
Deposition of Gabriel Cibrian	91	44
Deposition of Mariana Padilla	92	45
Stipulation	95	46
Deposition of Wm. J. Lewis	96	46
Map	267	110
Exhibit "N," attached to the deposition of Wm. J. Lewis	267	110
Map	274	113
Exhibit "O," attached to the same deposition	282	116
"A X," Exhibit No. 2, attached to same	297	122
"A Y," Exhibit No. 3, attached to same	299	123
Deposition of H. C. Melone	302	125
Deposition of Warren K. Bethel	308	128
Deposition of Asa Vestal	309	129
Deposition of Wm. C. Jones	311	130
Deposition of Wm. L. Smith	313	131
Deposition of Isaac Branham	314	132
Stipulation to admit all the testimony taken in No. 132	318	134
Deposition of Jose Noriega	319	134
Deposition of John La Croze	322	136
Map	327	138
Deposition of Jas. Alex'r Forbes	327	141
Exhibit "J. P."	376	165
Exhibit "Z. E."	379	167
Deposition of Wm. M. Lent	383	169
Deposition of John N. Hovey	384	170
Deposition of Samuel S. Johnson	386	171
Deposition of Wm. T. Wallace	387	172
Deposition of S. S. Barr	390	173
Deposition of Peleg Rush	391	173
Deposition of Jacob P. Leese	393	174
Deposition of Isaac Graham	395	175
Deposition of Frank Lightston	396	176
Deposition of Jacob R. Snyder	398	177
Deposition of H. F. Teschmaker	401	179
Deposition of Samuel J. Hensley	403	180
Map attached to deposition of Pedronillo Rios	406	181
Deposition of Pedronillo Rios	407	181
Deposition of John La Croze	410	183
Exhibit No. 1, attached to the deposition of John La Croze	412	184

	Original.	Print.
Admission of the United States district attorney	444	204
Certified copy of a grant to Jose Reyes Berreyesa, and stipulation	445	204
Deposition of Rufus C. Hopkins	448	206
Admission of the United States district attorney	450	207
Opinion delivered by the Hon. Ogden Hoffman, judge	451	207
Decree of confirmation	462	211
Order granting appeal	467	214
Clerk's certificate	468	214

Transcript of the proceedings in case No. 142—*The United States vs. The Guadalupe Mining Co.—for the place named "Los Capitancillos."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this second day of March, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of the Guadalupe Mining Company, for the place named "Cañada de los Capitancillos," was presented, and ordered to be filed and docketed with No. 744, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *Oct. 5th*, 1853.

In case No. 174, Guadalupe Mining Company, for a part of the place named "Cañada de los Capitancillos," the counsel for the claimants filed the following stipulation, to wit:

(Vide page 29 of this Transcript.)

SAN FRANCISCO, *April 25th*, 1854.

Case No. 744 was called; on motion of the counsel for the claimants, with the consent of the U. S. law agent, was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *May 2d*, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 45 of this Transcript.)

SAN FRANCISCO, *Aug.* 15, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 69 of this Transcript.)

Petition.

To the Commissioners appointed to investigate and settle private land claims in California:

Jacob D. Hoppe and Henry Laurencel, for themselves and their

Transcript of the proceedings in case No. 142—*The United States vs. The Guadalupe Mining Co.—for the place named "Los Capitancillos."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this second day of March, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of the Guadalupe Mining Company, for the place named "Cañada de los Capitancillos," was presented, and ordered to be filed and docketed with No. 744, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *Oct. 5th*, 1853.

In case No. 174, Guadalupe Mining Company, for a part of the place named "Cañada de los Capitancillos," the counsel for the claimants filed the following stipulation, to wit:

(Vide page 29 of this Transcript.)

SAN FRANCISCO, *April 25th*, 1854.

Case No. 744 was called; on motion of the counsel for the claimants, with the consent of the U. S. law agent, was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *May 2d*, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 45 of this Transcript.)

SAN FRANCISCO, *Aug.* 15, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 69 of this Transcript.)

Petition.

To the Commissioners appointed to investigate and settle private land claims in California:

Jacob D. Hoppe and Henry Laurencel, for themselves and their

associates, under the name of the Guadalupe Mining Company, represent, that on the 1st September, 1842, Juan B. Alvarado, then governor of California, by virtue of the powers conferred on him by the laws and regulations then in force, granted to one Justo Larios a tract of land known as the Cañada de los Capitancellos, contained in their certain natural boundaries stated in the grant, the said land lying within the limits of the present county of Santa Clara.

That on the 5th of September, 1845, the said Justo Larios, the grantee, sold and conveyed the said tract of land to one Grove C. Cook.

That on the 4th of June, 1850, the said Grove C. Cook conveyed to William Wiggins the undivided six-sevenths of said tract of land, and on the 22 of July, 1850, conveyed to him the remaining one-seventh.

That on the seventh of June, 1850, the said Wiggins conveyed to John B. Weller and James M. Jones an undivided fourth part of *of* said land.

That all the foregoing will more fully appear by reference to the original grant to Justo Larios, to the copy of the espediente, the conveyance from said Larios to said Cook, and the copies of the other conveyances herein referred to, all which are on file in the claim of Charles Fossat, which is numbered 340 on the docket of the commission, and copies of which will be hereafter presented in this claim.

That on the 7th of September, 1850, by an agreement in writing of that date, a copy of which is herewith filed, marked Exhibit M, the said Wiggins, Weller and Jones conveyed to the Guadalupe Mining Company a portion of the said tract of land particularly described therein.

That on the 26th day of November, 1850, the said Weller and Jones conveyed to Jacob D. Hoppe, president and ex-officio director, and Henry Laurencel and William Wiggins, directors of said company, for and in the name of said company, another portion of said tract of land, containing six hundred and fifty acres, more or less, adjoining the said tract before conveyed to said company, and particularly described in the deed of conveyance herein filed, marked Exhibit O.

That on the 15th day of March, 1851, the said William Wiggins executed to the same parties a conveyance of the said last mentioned portion of said tract, a copy of which conveyance is herewith filed, marked Exhibit P.

That under the grant and deeds of conveyance aforesaid they claim title to the said tract of land, part of said Cañada de los Capitancellos.

That they know of no other claim to the same; that, in support of their claim, they rely upon the original and other papers on file in claim No. 340, upon the papers filed herewith, and upon such other evidence as they may hereafter offer.

They pray the confirmation to the Guadalupe Mining Company of the title to the two said tracts of land, part of Cañada de los Capitancellos, as they are described and set forth in the said deeds of conveyance filed herewith, and severally marked Exhibits M, O, and P.

CRITTENDEN, INGE & MARTIN,
Att'ys for Claimants.

Filed in office March 2d, 1853.

GEO. FISHER, *Secretary.*

Exhibit M.—*Conveyance.*

Wiggins, Jones, Weller, &c., to Laineswain, Suñol et als.

An indenture made at San José, county of Santa Clara, this seventh day of September, eighteen hundred and fifty, between William Wiggins, James M. Jones and John B. Weller, of the first part, and Pedro Laineswain, Antonio Suñol, Henry Laurencel, Edwin B. Townsend, Philo Durfee, Henry Laurence, Jacob D. Hoppe, George B. Tingley, Pioche & Bayerque, Peter O. Minor, and A. C. Campbell, all of the pueblo of San José, witnesseth:

That whereas the parties of the first and second part have heretofore claimed, and now claim, adverse rights of possession and ownership in and to a certain quicksilver mine, situate in Santa Clara county, about seven miles southward of San José, and known as the Guadalupe mine; and whereas, for their mutual interest and for the purposes of settling all differences between them, and, secondly, working said mine, they have agreed to form an association or joint stock company, the property whereof shall consist of the said Guadalupe mine, and of a certain quantity of land adjacent thereto, measured, bounded, and described as follows, viz:

Commencing at a point on the north bank of the arroyo Seco, just four hundred yards distant on the surface of the east from a point on the said bank of the arroyo Seco south 10° 10′ of the entrance of the Guadalupe mine, which point of commencement is intended to be about 400 yards east of the entrance to said mine; thence north 10° east to the top or range of the hill on which the Guadalupe is situated, or to a line drawn east 10° south from the top of said Guadalupe hill; thence north 10° east to the bottom of the northern slope of said hill, or to a line drawn east 10° south from the bottom of said Guadalupe hill, north 10° east of the mouth of the mine; provided, however, that should the bottom of said hill be more than half a mile, surface measurement, from the top thereof, then this line is to be restricted to half a mile on the surface, from the top of the hill; thence west 10° north to the arroyo Seco; thence up and around the arroyo Seco to the place of beginning; all of which land, together with all the mines and minerals thereon situated, or therein contained, shall belong to said company,

with the right and privilege, moreover, of following any subterranean vein or veins of the said Guadalupe mine, should the same extend beyond the aforesaid limits; and whereas the parties heretofore, for the consideration aforesaid, and the sum of one dollar to each of said paid by said company, ceded, bargained, sold and conveyed, and do hereby bargain, sell and convey unto the said company, to be by them, their heirs and assigns forever, holden in fee simple, according to the term and in the proportion hereinafter expressed, all the right, title, and interest which the said parties, or each or any of them, have in and to the said premises, mines, lands, and appurtenances:

Now, by this indenture, it is agreed that, 1st. The said Guadalupe mine and appurtenances, and all other mines, land, or property whatever, by these presents did and do belong to said company, (mining) shall be divided into one thousand shares, which shall be owned and held in the following proportions, viz:

William Wiggans shall own two hundred and fifty shares.

J. M. Jones shall own forty-one and two-thirds shares.

John B. Weller shall own forty-one and two-thirds shares.

Pedro Laenesvaine shall own eighty-seven shares.

Antonio Suñol shall own ninety-five and one-half shares.

Henry Laurencel shall own two hundred and six and a half shares.

E. D. Townsend shall own eighty-three shares.

Philo Durfee shall own fifty-six shares.

Henry Laurence shall own twenty-seven and two-thirds shares.

J. D. Hoppe shall own twenty-eight shares.

G. B. Tingley shall own forty-nine shares.

Pioche & Bayerque shall own twenty-seven shares.

P. O. Munier shall own three and one-half shares.

A. C. Campbell shall own three and one-half shares.

2. The number of shares into which said property is divided as aforesaid shall never be lessened or increased, except by unanimous consent of the company; or except, if a majority in interest vote to increase the said number, then said majority shall be bound to allow to any dissenting shareholders the same proportion, in the increased number of shares, as those which he held in the previous number.

3. No shareholder shall under any pretence be deprived of any of his shares, or of his just proportion in the whole number of shares: Provided, always, that should he or his agents, if residing in this State, within two months, or, if residing out of this State, within six months after receiving due notice to pay his proportion of the costs and expenses of working and elaborating said mine or other proper expenses legally contracted, refuse to pay his said proportion, then the shares of said member shall be sold at public auction by said company, after due notice, in San Francisco, to a sufficient amount to pay such proportion of costs and expenses.

4. With the exception aforesaid, the management of the affairs and economy of said company, and the election of its officers, shall be governed and decided by the majority in interest, fractional shares being counted, and members having the power to vote by proxy: Provided, that the ordinary transaction and business of said company may be left to the *managers* of its officers, or trustees.

On any election for officers or trustees, or when any disbursement exceeding ten thousand dollars is required, every shareholder in this State or his agent shall be notified to vote thereon within one month.

5. The officers of this company shall be a president, secretary and treasurer, to be elected every two years, and the present officers shall remain in office until two years from this date.

6. Once in six months, at such time as may be hereafter agreed, the net increase and profits of this company shall be divided among the members thereof, their representatives or assigns, in proportion to the shares held by each.

7. The officers of this company shall keep true and accurate books of record of all the doings, and also books of accounts of all moneys received and disbursed; which books shall always be opened to inspection by the members of said company.

8. Any officer may be removed for malfeasance, and by the vote of the majority in interest of the whole number of shares.

9. The president and secretary shall issue and deliver to each member a separate certificate for each share he holds in said company, which shall be signed by the president and countersigned by the secretary. Such shares may be freely assigned, but the assignment thereof shall not bind the company until the assignee thereof present the same to the secretary and such assignment shall have been entered on the books of said company. Any member or assignee losing his certificate shall be entitled to a new certificate upon affidavit and proof of such loss, and giving bond and good security to indemnify the company for two years against the reappearance of the same. Such loss shall, moreover, be advertised three times in the newspapers published in this State, within the shortest possible time from the happening thereof, at the expense of the claimant of a new certificate, and he shall prove such advertisement before such certificate is issued.

10. These articles, or any of them, except the second and third, may at any time be changed by a vote of two-thirds in interest of the whole number of shares.

11. Whenever it shall be necessary to sell a portion of the shares of any member, by reason of his neglect to pay his proportion of costs and expenses, the same shall be sold at auction by any officer, or when it being necessary to take any judicial steps in order to such sale.

The purchaser of such shares shall be entitled to new certificates, and notice by advertisement shall be given, warning the public against the purchase of the old shares.

In witness whereof we have hereto set our hands and seals, at the day and year and place aforesaid; the words northern, p. first, line twenty-six, and on the other, proper expenses legally contracted, p. third, line sixth, and "after due notice," p. 3, line seventh, interlined before signed.

WILLIAM WIGGINS, [SEAL.]
JAMES M. JONES, for himself, and att'y for JOHN B. WELLER, [SEAL.]
P. LAM'S CLAIM, [SEAL.]
ANTONIO SUÑOL, [SEAL.]
H. LAURENCEL, [SEAL.]
THOMAS J. L. SMILEY, substitute att'y for EDWIN D. TOWNSEND and PHILO DURFEE, [SEAL.]
JACOB D. HOPPE, [SEAL.]
GEO. B. TINGLEY, [SEAL.]
PIOCHE & BAYERQUE, by their att'y, H. LAURENCEL, [SEAL.]
PETER O. MENIR, [SEAL.]
A. C. CAMPBELL. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss.

Be it remembered, that on this fifteenth day of March, A. D. 1851, before me, the undersigned, a notary public in and for the county and State aforesaid, duly commissioned and sworn, personally came Henry Laurencel, to me well known to be worthy of full credence, and he being by me duly sworn, on oath saith, that the signatures of W. Wiggins, James M. Jones, for himself and as attorney in fact for John B. Weller; Pedro Lanisevain, Antonio Suñol, H. Laurence, Thomas T. L. Smiley, substituted attorney in fact for Edwin D. Townsend and Philo Durfee; Jacob D. Hoppe, George B. Tingley, Pioche & Bayerque, by their attorney in fact, H. Laurencel; P. O. Munier, and A. C. Campbell, as appended to the within instrument in writing, are genuine and true; that he, the said affiant, when they, said parties aforesaid, signed and executed the same, was present and saw them execute the same, and that they then and there each severally acknowledged that they executed the same freely and voluntarily, and for the uses and purposes therein set forth and specified.

In witness whereof I have hereunto set my hand and affixed my seal of office, at the city of San José, in the county and State last aforesaid, this the day and year of our Lord last above written. [SEAL.]

J. ALEXANDER YOELL, *Notary Public.*

Filed 1 ¼ o'clock p. m., 15th March, 1851.

J. T. RICHARDSON,
Recorder S. C. C.

RECORDER OFFICE,
County of Santa Clara.

I hereby certify that the foregoing is a true copy of a deed from Wiggins, Weller and Jones, to Lainsevain, Suñol and others, as recorded in book C of deeds, pages 429, 430, 431, 432, 433, in this office.

Given under my hand and private seal, (there being no seal of office yet provided,) this 18th day of February, 1853.

[SEAL.] J. M. MURPHY,
County Recorder.

Filed in office March 2, 1853.

GEO. FISHER, *Sec'y.*

Exhibit P.—*Conveyance.*

William Wiggins to Jacob D. Hoppe et als., President, Directors, &c., of the Guadalupe Mining Co.

Know all men by these presents, that I, William Wiggins, of the pueblo de San José, California, in consideration of the sum of one dollar to me in hand paid by Jacob D. Hoppe, president and ex-officio director, and Henry Laurencel and William Wiggins, directors of the Guadalupe Mining Company, the receipt whereof I do hereby acknowledge, have bargained, sold, and quitclaimed, and by these presents do bargain, sell, and quitclaim, unto the said Jacob D. Hoppe, president and ex-officio director, and Henry Laurencel and William Wiggins, directors of the Guadalupe Mining Company, and to their successors in office and assigns forever, all my right, title, interest, "and" estate, claim, and demand, both at law and in equity, as well in possession as in expectancy, of, in, and to all that certain piece or parcel of land situate in the county of Santa Clara, being a part of the northwest end of the rancho de los Capitancellos, containing six hundred and fifty superficial acres of land, more or less, and bounded on the north and west by the arroyo Seco, on the south by land of the Guadalupe Mining Company, and on the east by a line drawn through the middle of the range of low hills running parallel with the arroyo Seco, excluding two hills next adjoining the lands of the Guadalupe Mining Company, and, from the northern end of said hills, running in a line northeasterly to the arroyo Seco, according to a survey and plan of said lands, made by Edwin Culberry, A. D. 1850, with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof, I have hereunto set my hand and seal, this

fifteenth day of March, in the year of our Lord one thousand and eight hundred and fifty one.

WILLIAM WIGGINS. [SEAL.]

The word heirs erased, and the words in office inserted in line 14, page 1, before signing, in presence of H. T. Townsend.

STATE OF CALIFORNIA,
County of Santa Clara.

On this fifteenth day of March, A. D. 1851, before me, a notary public in and for the county of Santa Clara, in the State aforesaid, personally appeared William Wiggins, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and private seal, (not having seal of office yet provided,) the day and year above written.

[SEAL.] J. J. H. GRAMMONT,
Notary Public.

Filed 3½ o'clock p. m., 15 March, 1851.

J. P. RICHARDSON,
Recorder.

RECORDER OFFICE,
County of Santa Clara.

I hereby certify that the foregoing is a true copy of a deed from William Wiggins to J. D. Hoppe, Henry Laurencel and others, directors of the Guadalupe Mining Company, as recorded in book of deeds C, pages 426, 427, in this office.

Given under my hand and private seal, (there being no seal of office yet provided,) this day of February, 1853.

[L. S.] J. M. MURPHY,
County Recorder.

Filed in office March 2, 1853.

GEO. FISHER, *Sec'y.*

Exhibit O.—*Conveyance.*

Weller and Jones to Hoppe, Laurencel, and Wiggins, &c.

This indenture, made at San José this twenty-sixth day of November, eighteen hundred and fifty, between John B. Weller and James M. Jones of the one part, and Jacob D. Hoppe, president and ex-officer director, and Henry Laurencel and William Wiggins, directors of the Guadalupe Mining Company, of the other part, all of San José, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars cash, (receipt whereof is hereby acknowledged,) and the further sum of five thousand six hundred and fifty dollars, to be paid to the

said party of the first part, by the parties of the second part, on or before the first day of May, eighteen hundred and fifty-one, doth hereby give, grant, bargain, sell, and convey unto the said parties of the second part, all that certain tract of land situated in the county of Santa Clara, being a portion of the northwest end of the rancho de los Capitancellos, containing six hundred and fifty superficial acres, more or less, and bounded on the north and west by the arroyo Seco, on the south by land of the Guadalupe Mining Company, and on the east by a line drawn through the middle of the range of low hills running nearly parallel with the arroyo Seco, (excluding two hills next adjoining the land of the Guadalupe Mining Company,) and from the northern end of said hills running in a northeasterly direction to the arroyo Seco, according to a survey and plan of said lands made by Edwin Cubbry, A. D. 1850, with all the privileges and appurtenances thereunto belonging; to have and to hold the said premises unto the said Guadalupe Mining Company, their heirs, assigns, and successors, forever, in fee simple; and the parties of the second part do hereby promise and agree to pay to the parties of the first part, or either of them, on or before the said first day of May, eighteen hundred and fifty-one, the said sum of five thousand six hundred and fifty dollars; and the better to secure the same, they do hereby mortgage, pledge and hypothecate all the aforegranted premises, and agree that the said mortgage and lien shall be duly foreclosed in default of payment of the aforesaid sum by the said parties of the first part. In witness whereof we have hereunto set our hands and seals at San José on the day and year above written; the said James M Jones hereto signing for himself, and as agent and attorney in fact for John B. Weller.

JAMES M. JONES, for himself and as attorney for JOHN B. WELLER. [SEAL.]
H. LAURENEL, [SEAL.]
WILLIAM WIGGINS, [SEAL.]
JACOB D. HOPPE. [SEAL.]

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this twenty-sixth day of November, A. D. 1850, before me personally came James M. Jones, William Wiggins, and Jacob D. Hoppe, all personally known to me, R. A. Redman, notary public within and for said county, to be the persons described in and whose names are subscribed to the foregoing instrument, and acknowledged that they executed the same for the purposes therein specified.

In testimony of which I have hereunto set my hand and affixed my official seal, the date last above written.

[SEAL.]

R. A. REDMAN, *Notary Public.*

STATE OF CALIFORNIA,
County of Santa Clara.

On this fourth day of March, A. D. 1851, personally appeared before me, a notary public in and for the said county, H. Laurencel, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.] FREDERICK HALL,
Notary Public.

Filed 3$\frac{11}{60}$ o'clock p. m., 15 March, 1851.

J. P. RICHARDSON,
Recorder S. C. C.

RECORDER OFFICE,
County of Santa Clara.

I hereby certify that the foregoing is a true copy of a deed from J. B. Weller and James M. Jones to Hoppee, Laurencel and Wiggins, as recorded in book C of deeds, pages 427, 428, in this office.

Given under my hand and private seal, (there being no seal of office yet provided) this 18th day of February, 1853.

[SEAL.]

J. M. MURPHY,
Co. Recorder.

Filed in office March 2, 1853.

GEO. FISHER, *Secretary.*

Deed—Grove C. Cook to Wm. Wiggins—3, *in No.* 340.

Know all men by these presents, that I, Grove C. Cook, of San José, for the price and consideration hereinafter expressed, do hereby convey, remise, release, and forever quitclaim, unto William Wiggins, also of San José, all my portion of, and right, title and interest in and to all that tract or parcel of land lying in said county of Santa Clara, about seven miles south of San José, known as the rancho de los Capitancellos, and bounded and described as follows, viz: on the south by the Sierra; on the west and north by the arroyo Seco; and on the east by a line commencing at the angle which forms the arroyo Seco and the arroyo de las Alamedas, and running then south by and past the eastern slope of the hill, situated in the Cañada, until it reaches the Sierra; together with my right, title and interest in and to the mines, minerals, and ores of whatever description, thereon situate: to have and to hold the above released premises unto the said William Wiggins, his heirs and assigns, forever.

The condition of the above is such, that the said William Wiggins, hereunto appearing and joining, agrees and binds himself,

his heirs, executors, and administrators, to pay to the said G. C. Cook the sum of fifty thousand dollars, on the following terms, to wit:

The sum of five thousand dollars on January 22d, 1852; a like sum on July 22d, 1852; a like sum on January 22d, 1853; a like sum on July 22d, 1853; a like sum on January 22d, 1854; a like sum on July 22d, 1854; a like sum on January 22d, 1855; a like sum on July 22d, 1855; for which payments at the times stipulated the said Wiggins gives his several promissory notes of this date, and moreover secures the same by mortgage, to the said Cook, of one-half of the said rancho, and minerals.

In witness whereof, we, the said George C. Cook and William Wiggins, have hereunto set our hands and seals at San José, this twenty-second day of July, eighteen hundred and fifty.

GEORGE C. COOK, [SEAL.]
WILLIAM WIGGINS. [SEAL.]

The words "right, title and interest in and to," line twelfth, page 1st, entered before signed.

In presence of—
JAMES M. JONES,
W. B. OLMEND.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

Be it remembered, that on the 24th day of July, 1850, before me, John S. Richardson, recorder in and for the said county, parsonally came George C. Cook, personally known to me to be the person who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and private seal (there being no official seal) this the date last above written.

[SEAL.] JOHN S. RICHARDSON,
Recorder.

Filed for record 6¼ o'clock p. m., 23 July, 1850.

J. S. RICHARDSON, *R. S. C. C.*
RECORDER'S OFFICE,
Santa Clara County.

I hereby certify that the foregoing is a true copy of a deed from Grove C. Cook to William Wiggins, as recorded in book A of deeds, pages 287 and 288, in this office.

Given under my hand and private seal (there being no seal of office yet provided) this 16th day of Feb., A. D. 1853.

[SEAL.] J. M. MURPHY,
County Recorder.

Filed in office Feb. 28, 1853.

GEO. FISHER, *Sec'y.*

Agreement of W. Wiggins with Weller & Jones—12, *in No.* 340.

Whereas William Wiggins, of the first part, has this day bargained, sold, and conveyed unto John B. Weller and James M. Jones one-fourth part of his rancho de los Capitancellos, being two thousand seven hundred and seventy acres, according to present measurement, to be taken and measured on the western and northwestern side of his said rancho, according to said indenture; and whereas it may happen that said rancho may hereafter be limited to a less quantity than it is now supposed to contain: now it is hereby agreed that, should the quantity of land in said rancho be diminished to less than two and one-half leagues, and should the said grant of two thousand seven hundred and seventy acres of land in any manner prejudice said Wiggins in the ownership and enjoyment of the three-fourths of his rancho by him retained, then the said two thousand seven hundred and seventy acres shall be so far diminished as not to include more than one-fourth of the quantity of land so declared to belong to the said rancho de los Capitancellos.

In witness whereof, we have hereunto set our hands and seals at San José, this tenth day of September, eighteen hundred and fifty.

WILLIAM WIGGINS. [SEAL.]
J. M. JONES, [SEAL.]
for himself, and Att'y for JOHN B. WELLER.

STATE OF CALIFORNIA,
Santa Clara County.

Be it remembered, that on the 6th day of September, A. D. 1850, before me, John S. Richardson, recorder in and for said county, personally appeared William Wiggins, and J. M. Jones for himself and on the part of J. B. Weller, personally known to me to be the persons described in and who executed the foregoing deed, and acknowledged that they executed the same freely, voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affix my private seal, there being no official seal, the date last above written.

[SEAL.] JOHN T. RICHARDSON,
Recorder S. C. C.

Filed for record at 10 o'clock a. m., Sept. 4, A. D. 1852, and recorded Sept. 4, A. D. 1852.

J. M. MURPHY, *Recorder.*
By C. YOUNGER, *Deputy.*

RECORDER OFFICE,
County of Santa Clara.

I hereby certify that the foregoing is a true copy of a deed from William Wiggins to J. B. Weller and J. M. Jones, as recorded in book E, pages 106 and 107, of deeds in this office.

Given under my hand and private seal, (there being no seal of office yet provided,) this 16th day of February, 1853.

[SEAL.] J. M. MURPHY,
County Recorder.

Filed in office Feb. 28, 1853.

GEO. FISHER, *Sec'y.*

No. 2.—*Transfer from Grove C. Cook and wife to Wiggins—in No.* 340.

This indenture, made and entered into this fourth day of June, A. D. eighteen hundred and fifty, by and between Grove C. Cook and Rebecca Cook, his wife, of the city of San José, California, of the first part, and Weller and Wiggins, of the county of Santa Clara, of the second part, witnesseth: That the parties of the first part, for and in consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and do, by these presents, grant, bargain, sell and convey unto the party of the second part, all his right and title in and to six-sevenths (6/7) of that piece or parcel of land lying and being in the county of Santa Clara, State of California, being about eight miles from the city of San José, and known as the rancho de Los Capitancillos, and bounded as follows, to wit: Colindante con la sierra con el arroyo por la parte del establiences de Santa Clara y con el rancho de José R. Berreyesa el cual tiene por lindero el angulo que forme el arroyo Seco y el de las Alamedas rancho al sur la falda de la loma situador el centro de la Cañada hacia el este hasta llegue a la sierra; (the same rancho was granted to Justo Larios by Governor Alvarado, and sold by Justo Larios to Grove C. Cook;) together with all and singular the right and privileges thereto belonging or otherwise appertaining: to have and to hold six-sevenths of said rancho as fully as they were held by the party of the first part, unto the party of the second part, his heirs, assigns and administrators forever.

In witness whereof, we have hereunto set our hands and seals, the day and year above written.

G. C. COOK. [SEAL.]

REBECCA her ⋈ mark. COOK. [SEAL.]

Winess: ISAAC BRANHAM.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this the fourth day of June, A. D. 1850, before me, a notary public in and for the county aforesaid, personally came Grove C. Cook and Rebecca Cook, his wife, to me known to be the persons who signed the foregoing conveyance, and acknowledged that they executed the same freely and voluntarily, and for the uses and

purposes therein mentioned; and she, the said Rebecca, his wife, being by me made acquainted with its contents, and on an examination separate and apart from her husband, acknowledged that she executed the same freely and voluntarily, without fear or compulsion, and that she did not wish to retract the execution thereof.

Given under my hand and private seal, there being no notarial seal yet provided.

C. F. RYLAND, [SEAL.]
Not. Public.

Filed for record 10 $\frac{10}{60}$ o'clock a. m., 8th June, 1850.
J. T. RICHARDSON,
Recorder of said County.

I certify that the foregoing is a true copy. Witness my hand and private seal, (there being no official seal yet provided for office.)

Santa Clara, June 1st, 1852.

[SEAL.] JOHN M. MURPHY, *County Recorder.*

Filed in office Sept. 13, 1852.

GEO. FISHER, *Sec'y.*

10.—*Deed, William Wiggins to Weller & Jones—in No.* 340.

Deeds A, page 81.

Know all men by these presents, that I, William Wiggins, of the county of Santa Clara, for and in consideration of the sum of thirty thousand dollars, to me in hand paid, and receipt whereof I hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain, sell, and convey unto John B. Weller and James M. Jones, both of the county and city of San Francisco, the undivided one-fourth portion and part of all that certain tract or parcel of land lying and being in the county of Santa Clara, known as the rancho de los Capitancellos, being the same purchased by the said Wiggins and Grove C. Cook, of Justo Larios, and bounded and described as follows, to wit: Colindante con la sierra por el arroyo Seco por la parte del establecimiento de Santa y con el rancho del ciudadano José R. Berryesa; el cual tiene por lindero el angulo que forme el arroyo Seco y el de los Olemetos rumbo, al sur la falda de la loma situada el centro de la Cañada, hacia el este, hasta llegue a la sierra; together with all the undivided one-fourth part of all and singular the appurtenances thereof, excepting mines, minerals, and ores of quicksilver, or other precious metals:

To have and to hold the same, with the appurtenances aforesaid, unto the said John B. Weller and James M. Jones, and their heirs and assigns, in fee simple, forever. And the said William Wiggins doth for himself, his heirs, executors, administrators and assigns, covenant, promise, and agree, to and with the said John B. Weller and J. M. Jones, their executors, administrators and

assigns, in manner and form following, to wit: That the said Weller and Jones, their heirs and assigns, shall and may peaceably and quietly have, hold, and enjoy the said lands and appurtenances, without lawsuit, trouble, or eviction of or by the said William Wiggins, his heirs and assigns, or of, or by, or under, on interest for him, them, or any of them. And the said William Wiggins doth also covenant to and with the said J. B. Weller and J. M. Jones to divide, or cause to be divided, partitioned, or set apart for their sole property, use, benefit and behalf, the said undivided fourth part of the said rancho, whenever the same shall be by them demanded, in such manner as may be agreed upon as just, and for that purpose to take such legal or other steps as may be necessary to divide the said lands between himself and that portion of said rancho set apart. They shall be entitled to demand and receive one-fourth part of all the net profits and proceeds of said lands and appurtenances, wood, timber, &c., and to cultivate any portion thereof, or cause the same to be cultivated, improved, or inhabited, not exceeding one-fourth of said rancho, and in the final division of said rancho they shall be entitled to any and all the increased value of the said lands from such cultivation or improvement.

And the said William *William* Wiggins, and his heirs, all and singular the aforesaid lands, appurtenances, premises, and every part thereof, unto the said John B. Weller and James M. Jones, their heirs and assigns, shall and will warrant and forever defend against him, the said William Wiggins, his heirs and assigns, by these presents.

In witness I have hereunto put my hand and seal at the town of San José, county of Santa Clara, this seventh day of June, in the year eighteen hundred and fifty.

[SEAL.] WILLIAM WIGGINS.

Signed, sealed, and delivered in presence of—

EDMOND D. HUMMOND,
FREDERICK HALL.

STATE OF CALIFORNIA,
Santa Clara County, ss.

Be it remembered, that on the 8th day of June, A. D. 1850, before me, John S. Richardson, recorder in and for said county, personally appeared William Wiggins, known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my private seal, (there being no official seal,) the date above written.

[SEAL.] JOHN T. RICHARDSON,
Recorder of said County.

Filed for record $11\frac{25}{100}$ o'clock a. m., 8 June, 1850.
J. T. RICHARDSON, *Rec. S. C. C.*

RECORDER'S OFFICE,
Santa Clara County, Feb'y 10, 1853.

I hereby certify that the above is a true copy of a deed from Wm. Wiggins to Weller and Jones, recorded in book A of deeds, pages 81 and 82, in this office.

Given under my hand and private seal (there being no of office provided,) this 10th day of February, A. D. 1853.
J. M. MURPHY, *County Recorder.*
By S. O. HOUGHTON, *Deputy.*

Filed in office Feb. 28, 1853.
GEO. FISHER, *Sec'y.*

11.—*Agreement, Wiggins and Jones and Weller—in No.* 340.
Deeds C, page 458.

An indenture made at San José, Santa Clara county, this sixth day of September, eighteen hundred and fifty, between William Wiggins of the one part, and James M. Jones and John B. Weller of the other part, all of the county aforesaid. Whereas the said party of the first part has heretofore bargained, sold and conveyed unto the said parties of the second part the undivided one-fourth part of the rancho de los Capitancellos, situated in said county; and whereas the said one-fourth part of said rancho is one thousand seven hundred and seventy acres, according to a survey thereof; and whereas, for convenience of all parties, it has been determined and agreed to partition, divide, and set apart the said one-fourth belonging to the parties of the second part: Now this indenture witnesseth, that for and in consideration of the sum of one dollar to him in hand paid, the said William Wiggins doth hereby bargain, sell, and convey, and set over, unto the said J. M. Jones and J. B. Weller, two thousand seven hundred and seventy superficial acres of land of the rancho de los Capitancellos, which land shall be taken, bounded, and described as follows, viz: All that portion of said rancho, being the western end or portion thereof, and marked on the map made by Jacob R. Snyder as the *estalishmento* de Santa Clara, to wit: all the land lying to the west of the middle of the ridge of the low hills running north and south, (which hills lie at the western end of said rancho,) and between the said hills and the arroyo Seco, and south by the land of the Guadalupe Mining Company, east by the middle of the low hills, and west by the arroyo Seco; and should there not be sufficient of said land to make the aforesaid quantity of two thousand seven hundred and seventy acres, (and it is not believed there is,) then a sufficient quantity of land shall be taken, and measured as nearly as possible in a square form, from the northwest corner

of said rancho, joining the arroyo Seco, as will make up the said two thousand seven hundred and seventy acres.

In witness whereof, the parties hereunto set their hands and seals at the day and year aforesaid.

WILLIAM WIGGINS. [SEAL.]
JAMES M. JONES, [SEAL.]
For himself, and Att'y of JNO. B. WELLER.

Signed, sealed and delivered in presence of—
JOHN T. RICHARDSON.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

Be it remembered that on this, the 6th day of September, A. D. 1850, before me, John T. Richardson, recorder in and for the said county, personally appeared William Wiggins, and James M. Jones for himself and on the part of John B. Weller, personally known to me to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my private seal the date last above written.

JOHN T. RICHARDSON,
Recorder S. C. C.

Filed 8 o'clock a. m., 15th May, A. D. 1851.
J. T. RICHARDSON, *Recorder.*

RECORDER'S OFFICE,
Santa Clara County, Feb. 10th, 1853.

I hereby certify that the foregoing is a true copy of an agreement between William Wiggins and J. M. Jones and John B. Weller, recorded in book "C" of deeds, pages 458 and 459, in this office.

Given under my hand and private seal (there being no seal of office provided) this 10th day of February, A. D. 1853.

J. M. MURPHY, *County Recorder.*
By S. O. HOUGHTON, *Deputy.*

Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

Affidavit of H. Laurencel.

CHARLES FOSSATT, Cl'mt,
vs.
THE UNITED STATES.
} No. 340.

Before the Board of Land Commissioners of the United States.

Henry Laurencel, being duly sworn, deposes and says, that he is the agent and att'y in fact of Charles Fossat, the claimant in this

case, and has had the entire direction and control in regard to the presenting this claim to the board of land commissioners; and that he has had in his custody all the original papers relating to the claim, which was subject to the control of the claimant; that he does not know where are the original papers of which copies are filed, numbered 2, 3, 4, 10, and 11, but supposes them to be in the possession of the parties or their representatives.

That the originals of the documents, of which copies are filed, numbered 6, 8, 9, and 12, were in his possession until recently, when they were stolen, and have not been recovered.

H. LAURENCEL.

Sworn to and subscribed before me this 28th of Feb'y, 1853.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office April 15th, 1853.

GEO. FISHER, *Sec'y.*

Agreement.

No. 744.—Claim of Guadalupe Mining Company.—Before the U. S. Land Commissioners.

It is agreed that any testimony which has been or may be taken in the case No. 340 on the docket of the commissioners, of Cha's Fossat, claim of the Cañada de los Capitancillos, may be read in evidence in this case, together with the papers attached to the same, or on file in the former case, a copy of which testimony and papers being filed herein.

March 28th, 1853.

ROBERT GREENHOW,
Associate Law Agent.
A. P. CRITTENDEN,
For Claimant.

Filed in office October 5th, 1853.

GEO. FISHER, *Secretary.*

Stipulation.

No. 744.—Before the Land Commissioners.

It is hereby admitted as a matter of fact, that the land claimed in this case lies in the State of California, north of parallel 37° north latitude.

J. A. McKUNE,
Law Agent.
A. P. CRITTENDEN,
Att'y for Claimants.

Filed in office September 5th, 1854.

GEO. FISHER, *Secretary.*

Deposition of A. M. Pico in No. 340.

OFFICE OF THE LAND COMMISSION OF CALIFORNIA,
San Francisco, Oct. 28, 1852.

On this day, before me, Harry J. Thornton, one of the commis-

sioners for ascertaining and settling private land claims in California, came Antonio Maria Pico, a witness produced on behalf of the claimant, Charles Fossat, whose petition is No. 340 on the docket of said commission. The witness being duly sworn, testified as follows:

Questions by Claimant's Counsel in Claim No. 340, *on file before the Board of Land Commissioners.*

Question 1. What is your name, age, and place of residence?

Answer. My name is Antonio Maria Pico; my age 44 years; and place of residence is at San José.

Question 2d. How long have you resided there, and what office have you filled, and at what time?

Answer. I have resided there since the year 1832, and filled the office of alcalde at different times, from 1835 to 1849.

Question 3d. Are you acquainted with Justo Larios; how long, and where?

Answer. I am acquainted with him, and have been acquainted with him all my life, at Monterey and at San José.

Question 4th. Do you know whether or not a grant of land was made to him by the Mexican government; if so, where is said land situated, and state, if you know, whether said Larios built a house on it, and occupied it, or made any improvements; when, and what were they?

Answer. I know that a grant of land was made to him by Governor Alvarado, of one league, more or less, which land was called rancho de los Capitancillos; it is situated about three leagues from the town of San José; he built a house on said land and occupied it with his family, consisting of about twelve persons, some time in the year 1839; he made a corral and cultivated a field of wheat, and had a garden, with many fruit trees; he carried on the manufacture of saddles and soap, and had one of the best conducted ranchos in that section of country; it has been in constant occupation, from before the date of the grant to the present time.

Question 5. Was judicial possession given of said rancho, or was such possession solicited by said Larios?

Answer. When I was alcalde, in 1842 and in 1844, said Larios solicited me to give him judicial possession, and to measure it according to the law; but there being at that time a difficulty between the surveyor and myself in regard to our official duties, I was prevented from giving him the solicited possession.

Question 6. Look upon the document now here shown you, marked No. 1, and say whether the signature thereto subscribed is your own proper signature?

Answer. It is; the document is original, it being written by myself and signed *and signed* as alcalde.

Quest. 7. Look also on document marked B, and state whether

thereto of Juan B. Alvarado, from your knowledge of his handwriting, is genuine?

Answer. It is his genuine signature. I know it to be genuine from having frequently seen him sign his name.

ANTONIO MA. PICO.

Notice accepted.

R. GREENHOW,
U. S. Law Agent.

Sworn to and subscribed before me, on the 28th of October, 1852.

HARRY J. THORNTON, *Com'r.*

Filed in office Dec. 23d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Ant'o Sunol in No. 340.

OFFICE OF THE LAND COMMISSION FOR CALIFORNIA,
San Francisco, Oct. 28, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Antonio Sunol, a witness produced in behalf of the claimant, Charles Fossat, whose petition is No. 340 on the docket of said commission.

The witness being duly sworn, testified as follows:

Questions by Claimant's Counsel in Claim No. 340 *on file in the office of the Secretary of the Board of United States Land Commissioners.*

Question 1. What is your name, age, and place of residence?

Answer. My name is Antonio Sunol; my age is 55 years; and place of residence is at San José.

Question 2d. Are you acquainted with Justo Larios, how long, and where did you become acquainted with him?

Answer. I am acquainted with him, and have been acquainted with him thirty-four years; I became acquainted with him at San José.

Question 3. Do you know or not whether a grant of land was made to him by the Mexican government; if so, when and where is it situated?

Answer. I know that a grant of land was made to him by the Mexican government; that it is situated in the Cañada de los Capitancillos, about two leagues and a half from the town of San José.

Question 4. Do you know or not whether said Larios built a house on said land and occupied it; if so, when, and whether he put any other improvements on it, and what were they?

Answer. I know that he built a house on it, and occupied it within the same year it was granted, and that he made a corral and fences, and cultivated it in sowing fields. He had also stock of horses and cattle on it.

Quest. 5. Has said grant of land been occupied and cultivated since the date of the grant, and how long?

Answer. I know that said grant has been occupied without interruption from the date of the grant to the present time.

Ques. 6. Look at the document now here shown you, marked B, and state whether the signature of Juan B. Alvarado subscribed to the same is his true and genuine signature?

Answer. It is his true and genuine signature, such as he has seen him, said Alvarado, write.

Ques. 7. What office did you hold under the former government?

Ans. I was sub-prefect.

ANTONIO SUÑOL.

Notice accepted.

R. GREENHOW.

Sworn to and subscribed before me, on the 28th October, 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office Dec'r 23d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Anto. Sunol in No. 340.

SAN FRANCISCO, *Oct.* 2*d*, 1852.

On this day, before Comm'r Harry J. Thornton, came Antonio Suñol, a witness in behalf of the claimant, Charles Fossatt, petition No. 340, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent present.

Questions by Claimant's Counsel in Claim No. 340 *on file in the office of the Secretary of the Board of Land Commissioners.*

Question 1. What is your name, age, and place of residence?

Answer. My name is Antonio Suñol; my age is 55 years; and place of residence is at the town of San José.

Question 2d. Are you acquainted with the signatures of Antonio Maria Pico, Juan M. Marsh and Carlos Maria Weber, which are subscribed to the document now here shown you, marked No. 1; are they genuine signatures?

Answer. I am acquainted with the signatures of Antonio Maria Pico and Carlos Maria Weber, and know them to be genuine from having seen them write.

ANTONIO SUÑOL.

Notice accepted.

R. GREENHOW,
U. S. Law Agent.

Sworn to and subscribed before me, on 2d October, 1852.

HARRY J. THORNTON,
Com'r, &c.

Filed in office Jan'y 11th, 1853.

GEO. FISHER, *Sec'y.*

No. 340 *or* 744—*Los Capitancillos.*—A, *Espediente in No.* 340.

Espediente Romaredo por el ciudadano Justo Larios, en solicitud del parage conveido con el nombre de Cañada de los Capitancillos.

1842.

294.

Sello Tercero—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.

[SELLO.]

Rehabilitado por la misma, para el año de mil ochocientos, cuarenta y dos.

ANTONIO MARIA OSIO.

ALVARADO.

S'or Prefecto del 1a Distrito:

Justo Larios ante V. S. con el debido respeto dice: que habiendo comprado a Leandro Galindo una casa que tenia, situada en el paraje conocido con el nombre de Cañada de los Capitancillos, me cedio el derecho que tenia al terreno p'r concession del J. A. del P. de S. José Guadalupe como constares el espedediento que presente en al año de 1836 al E. S. gobernador, e igualmente en otro que presente el año de 40 al S'r Dn. José Maria Villa ascargo de entonces de la prefectura de 1a distrito y como ambos espedientes han sido por desgracica estravisadas, suplica a V. S. se digne admitir este, y concederme el terreno que solicito y hay poseo, desde el ellan año de 1836 declarandome la propiedad. Los limites de dicho sitio, son, desde los linderos de Santa Clara, hasta el corral llamado del finero de Macarin.

Por tanto—

A. V. S. suplico se digne acceder a esta mi peticion en lo que recibire gracia y merced. Acompaño a V. S. el diseño del sitio que pretende.

Monterrey, Junio 15, de 1842.

EL SUPLICANTE.

MONTERREY, 16 *de Junio, de* 1842.

Habiendose arreglado los linderos por el prefecto y juez de paz de este lugar del terreno que pretende el interesado estendere el correspond'te decreto de concession.

Sello Tercero—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el departamento de la Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.

[SELLO.]

Rehabilitado por la misma por el año de mil ochocientos cuarenta y dos.

ANTONIO MARIA OSIO.

ALVARADO.

Nos. 340 & 744. TERREY, 16 *de Junio, de* 1842.

Vista la peticion con que da principio este espediente, el asentimiente que tubieran los ciudadanos Justo Larios y José R. Berryesa con presencia del prefecto y juez de paz de este lugar, en todo lo demas que se tubo presente y vez convenido de conformidad con las leyes y reglamentos de la materia, declaro el mencionado Justo Larios dueño en propiedad de una parte del terreno nombrado Cañada de los Capitancellos, colindante con la sierra, con el arroyo Seco por la parte del establecimiento de Santa Clara y con el rancho del ciudadano José Reyes Berreyesa, el cual tiene por lindero el angulo que forme el arroyo Seco y el de las Alamitos; rumba el sur la falda de la loma, situada en el centro de la Cañada hacia el este y hasta llegar a la Sierra. Librese el correspondiente despacho, tomase razon en el libro respectivo y dirijan este espediente a la ex'ma junta departamental para su aprobacion. El Señor Dn. Juan B. Alvarado, gob'r constitucional del departamento de las Californias, asi lo mando decreto y firmo, segun doy fee.

[*For map see original, page* 49.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el c'o Justo Larios ha pretendido para su beneficio personal y el de su familia el terreno converdo con el nombre de los Capitancillos, colindante con la Sierra, con el arroyo Seco p'r la parte del establacimiento de Santa Clara y con el rancho del ciudadano José R. Berreyesa el cual tiene por lindero el angulo que forme el arroyo Seco y el de los Alametos; rumbo al sur la falda de la loma cituado en el centro de la Cañada, asi al este hasta llegar a la Sierra; practicadas previamente las diligencias, aberiguaciones, concernientes segun lo dispuesto por leyes y reglamentos de la materia, usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el terreno mensionado declarandole la propiedad de el f'n las presentes letras sugetandose a la aprobacion de la ex'ma junta departamental, y a las condiciones siguientes:

1a. Podra cercarlo sin perjudicar los travesias y servidumbres,

lo disfrutara libre y exclusivamente; destinandolo al uso é cultivo que mas le acomodo pero dentro de un fabricara casa y estara habitado.

2a. Solicitara del juez respetivo que le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneros, algunos frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de un sitio de ganado mayor poco mas o menos segun esplica el diseño qu ecorre con el espediente respectivo.

El juez que derege la posecion la hara medir conforme a ordinanza quedando el sobrante que resulte a la nacion para los usos que mas le convengan.

4a. Si contrabinere de estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendo por firme y valedero este titulo, se tome razon de el en el libro respectivo sobre adjudicaciones de terrenos valdeos y se entregue al interesado para su resguardo y demas fines.

Dado en Monterrey, a 1ro de Agosto, de 1842.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES IN CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and, as such, now having in my office, and under my custody, a portion of the archives of the late Spanish and Mexican Territory or department of Upper California, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 16th day of June, 1852.

(Signed) SAM. D. KING,
Surv. Gen. Cal.

Filed in office Sept. 13th, 1852.

GEO. FISHER, *Sec'y.*

Los Capitancillos.—B, *Translation of Espediente in No.* 340.

Espediente.

Presented by the citizen Justo Larios, who asks for the place known by the name of the Cañada de los Capitancellos.

1842.

294.

Third Seal—Two Reals.

Authorized provisionally by the maritime custom-house of the

port of Monterey, in the department of the Californias, for the years 1840 and 1841.

ANTONIO MA. OSIO.

ALVARADO.

Authorized again by the same for the year 1842.

ANTONIO MA. OSIO.

ALVARADO.

{Ada. Marita. de Monterrey.}

To the Prefect of the First District:

I, Justo Larios, respectfully say, that having purchased from Leandro Galindo a house which he had, situated at the place known by the name of the Cañada de los Capitancillos, he conveyed to me all the right which he had to the land by the concession of the illustrisimo ayuntamiento of the pueblo of San José Guadalupe, as appears in the record of proceedings (espediente) which I presented in the year 1836 to his excellency the governor, and also in the other, which I presented in the year 1840 to Dn. José Maria Villa, then prefect of the 1st district; and as both records (espedientes) have been unfortunately lost, I pray your exc'y to receive this and grant me the land which I solicit, and which I have possessed since the year 1836, declaring it my property. The limits of said tract are from the boundaries of Sta. Clara to the corral, called the corral of the late Macarin. Wherefore I beseech your excellency to grant this my petition, whereby I shall receive favor and reward. I herewith present to your excellency the map of the tract which I ask.

Monterrey, June 16th, 1842.

THE PETITIONER.

MONTEREY, 16 *June*, 1842.

The boundaries of the land which the petitioner asks having been regulated by the prefect and the justice of the peace of this place, let the proper decree of concession be issued.

Third Seal—Two Reals.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias for the years 1840 and 1841.

ANTONIO MA. OSIO.

ALVARADO.

Authorized again by the same for the year 1842.

ANTONIO MA. OSIO.

ALVARADO.

No. 340 & 744.

{ Ada. Marita. de Monterrey. }

MONTEREY, 16*th June*, 1842.

In view of the petition with which this espediente begins, the settlement which the citizens Justo Larios and José R. Berryesa had in the presence of the prefect and justice of the peace of this place, and everything else relating thereto, in conformity with the laws and regulations on the subject, I declare the said Justo Larios owner in full property of a part of the land called Cañada de los Capitancillos, bounded by the Sierra, by the arroyo Seco on the side of the establishment of Sta. Clara, and by the rancho of the citizen José R. Berryesa, which has for boundary a line commencing at the angle formed by the junction of the arroyo Seco and the arroyo de los Alamitos; thence southward to the Sierra, passing by the eastern gore of the small hill situated in the centre of the Cañada. Let the proper decree be issued and registered in the proper book, and let this record of proceedings (espediente) be forwarded to the departmental assembly for its approval. Dn. Juan B. Alvarado, constitutional governor of the department of the Californias, has ordered, decreed, and subscribed.

To all which I certify.

Juan B. Alvarado, Constitutional Governor of the Californias.

Whereas the citizen Justo Larios has asked, for his own benefit and that of his family, the land known by the name of the Capitancillos, bounded by the Sierra, by the arroyo Seco on the side of the establishment of Sta. Clara, and by the rancho of the citizen José R. Berryesa, which has for boundary a line running from the junction of the arroyo Seco and arroyo de los Alamitos, southward to the Sierra, passing by the eastern gore of the small hill situated in the centre of the Cañada, the necessary steps having been taken, and inquiries made according to the laws and regulations on this subject, by virtue of the powers conferred upon me, in the name of the Mexican nation, I have granted him the said land, declaring it his property by these presents, subject to the departmental assembly, and to the following conditions:

1st. He may enclose it without injury to the passes, roads, and servitudes. He may enjoy it freely and exclusively, using or cultivating it as may best suit, but within one year he shall build a house and it shall be inhabited.

2d. He shall solicit the proper judge to give him juridical possession, in virtue of this decree, by whom the boundaries shall be marked out, and he shall put on the boundaries, in addition to the landmarks, some fruit trees, or useful forest trees.

3d. The land herein referred to is one league of the larger size, a little more or less, as is explained by the map accompanying the espediente. The judge who shall give the possession shall have

it measured in conformity to law, leaving the surplus which remains to the nation for the purposes which may best suit it.

4th. If he should violate these conditions he shall lose his right, and liable to be denounced by another. Wherefore I order that this title, being held firm and valid, shall be registered *shall be registered* in the book of adjudications of vacant lands and delivered to the person interested for his protection, and other purposes.

Given in Monterey the 1st of August, 1842.

I, George Fisher, secretary of the board of United States commissioners to ascertain and settle the private land claims in the State of California, hereby certify that the foregoing is a true and correct translation of a Spanish document on file in this office in case No. 340, Charles Fossat, and in my keeping and custody as such secretary.

Witness my hand this 30th July, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Filed in office September 13th, 1852.

GEO. FISHER, *Sec'y.*

No. 340 *for* 744—*Los Capitancillos.*—B, *Grant annexed to the Dep'n of Antonio Sunol in No.* 340.

Sello Primero—Seis Pesos.

Habilitado por la aduana maritima de Monterrey para las años de 1842 y 1843.

ANTONIO MA. PICO.

ALVARADO.

[SELLO.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el ciudadano Justo Larios ha pretendido para su beneficio personnal y el de su familia, el terreno conocido con el nombre de los Capitancillos, colindante con la Sierra, con el arralto Seco por la parte del establecimiento de Santa Clara y con el rancho del ciudadano José R. Berryesa el cual tiene por lindero, el angulo que forme el arroyo Seco y el de los Alamitos, rumbo al sur, la falda de la loma situada en el centro de la Cañada asi a el este parte llegar a la Sierra. Practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto per leyes y reglamentos: usando de las facultades que me son conferidas a nombre de la nacion Mexicana he venido a concederlo el terreno mencionado, declarandole la propiedad de el por las presentes letras, sujetandose a la aprobacion de la ex'ma junta departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres, la disfrutará libre y esclusivamente al uso y cultivo que

mas le acomode, pero dentro de un año fabricará casa y estará habitada.

2a. El terreno de que se hace menciones de un sitio de ganado mayor poco mas o menos, segun esplica el diseño que corre en el espediente respectivo. El jues que diere la posecion lo hará medir, conforme a ordenanza, que dando el sobrante que resulte a la nacion para los usos convenientes.

3a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcara los linderos en cuyos limites pondra las correspondientes mojoneras.

4a. Si contravinare a estes condiciones perdra su derecho al terreno y sera denunciable por otro.

In consequencia mandó que teniendoze se por firme y valdero el presente titulo, se tome razon en el libro que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterrey a 1a de Septiembre de mil ochocientos cuarenta y dos.

(Firmado) JUAN B. ALVARADO.

Queda tomado razon de este despacho en el libre de acientos sobre adjudicaciones de terrenos baldios a fa.

El ex'mo sr. gobernador ha dispuesto se tome razon de esta convenecire en la prefectura del 1o distrito.

Filed in office Dec'r 13th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

No. 340 *for* 744—*Los Capitancillos.*—D, *Translation of Grant in No.* 340.

First Seal—Six Dollars.

Authorized by the maritime custom-house of Monterrey for the years of 1842 and 1843.

ANTONIO MA. OSIO.

ALVARADO.

{ Maritime Custom-house of Monterrey. Seal. }

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas the citizen Justo Larios has asked, for his own benefit and that of his family, the land known by the name of the Capitancillos, bounded by the Sierra, by the arroyo Seco on the side of the establishment of Sta. Clara, and by the rancho of the citizen José R. Berryesa, which has for boundary a line running from the junction of the arroyo Seco and arroyo de los Alamitos, southward to the Sierra, passing by the eastern base of the small hill situated in the centre of the Cañada, the necessary steps having been taken, and inquiries made according to the law and regulations on the subject, by virtue of the powers conferred upon me, in the name of the Mexican nation, I have granted him the said land, declaring it

his property by these presents, subject to the approval of the departmental assembly, and to the following conditions:

1st. He may enclose it without injury to the passes, roads and servitudes; he may enjoy it freely and exclusively, using or cultivating it as may best suit him; but within one year he shall build a house, and it shall be inhabited.

2d. The land herein referred to is one league of the greater size, a little more or less, as is explained by the map accompanying the espediente. The judge who shall give the possession shall have it measured in conformity to law, leaving the surplus which remains to the nation for the purposes which may suit it.

3d. He shall solicit the proper judge to give him juridical possession in virtue of this decree, by whom the boundaries shall be marked out, and upon which he shall put the proper landmarks.

4th. If he should violate these conditions, he shall lose his right to the land, and it shall be open to be denounced by another.

Wherefore I order that this title, being held firm and valid, shall be registered in the proper book, and be delivered to the grantee for his protection and other purposes.

Given at Monterrey the 1st of September, 1842.

JUAN B. ALVARADO.

This is recorded in this office in the book of entries of adjudications of vacant lands, page .

His excellency the governor has ordered that this grant be recorded in the prefecture of the 1st district.

I, George Fisher, secretary of the board of United States commissioners to ascertain and settle the private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document in this office in case No. 340, Charles Fossat, and in my keeping and custody as such secretary.

Witness my hand this 30th July, 1853.

Filed in office, Sept. 13th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

No. 340 *for* 744.

Sello Tercero—Un Peso.

Habilitado provisionalmente por la aduana maritima de Monterrey, en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

Los Capitancillos.—Original Deed from Justo Larios to Grove C. Cook in No. 340.

[SELLO.]

En el pueblo de San José Guadalupe a los cinco dias del mes de

Sept're de mil ochocientos cuarenta he cinco; ante mi Antonio Ma. Pico, alcalde de 1o nominacion del pueblo de S'n José Guadalupe y ante los testigos de asistencia con quienes actuo en forma establecida a mas de las instrumentales segun al fin se hara mencion parecio de presente el ciudadano Justo Larios y dijo que por si y a nombre de sus sucesores y herederos y quien de ellos hubiera titulo voz y causas vende y da en publica venta y enagenacion perpetua un sitio poco mas ó menos, segun esplica el titulo del rancho que posee situada en este jurisdiccion del pueblo de San José a Dn. Govelloel naturalizado en este departamento y vecino de dicho pueblo qual adquirio por titulo dado por el ex'mo s'or gobernador de este departamento en el 1o de Sept're de mil ochocientos cuarenta y dos, como consta de los documentos que he presentado y doy fee, he vistó la cual parte del rancho con todo el derecho que a el se pertenece le vende al espressado Dn. Govellael en la cantidad de trecientos pr. en plata, luego cincincuenta mas en plata dentro de seis meses desde esta fecha, y veinte cinco pesos en efectos dando desde esta fecha por concluido el contrato, y por tanto se de todo el derecho de propiedad consecion y posecion que tiene de dicho terreno al mencionado Dn. Govellael y desde hoy en adelante y para siempre se disa podera quila y aparta a sus herederos y sucesores del domino posecion y otros cualesquiera derechos que le competan al mencionado terreno, los sede a favor del comprador para que la pose a y goza pacificamente y ajo de el *el* uso que le conbenga entre y apodere de dicho parte del terreno y tome la posecion que le corresponda y por derecho le complete y a la firmera y valedarcian de lo que en virtud de este venta, hace, obliga, el otorgante su persona y bienes, habidos y por haber y con ellos se sumete al fuero y jurisdiccion de los señores jueces que del caso deben conocer de cual quera estado que sean para su cumplemiento le competen y estrechen como por sentencia posada en autoridad de cosa jusgada, renuncia todos los leyes a su favor en culla virtud asi lo otorgo y firmo por ante mi y los testigos de asistencia en defecto de escribano publico siendo los instrumentales los C. C. nos.

ANTONIO MA. PICO.
JUSTO ⋈ LARIOS.

Asistencias:
JUAN M. MARH,
CARLOS MA. WEBER.

Endorsed: No. 1. Recorded in the pueblo de San José, Aug. 20, 1849, in book 200 and 201.
Filed for record 10½ o'clock a. m., 17 July, 1850.
J. T. RICHARDSON,
Recorder S. C. C.

Recorded in book of deeds A, pages 258 and 259.
J. T. RICHARDSON,
Recorder S. C. C.
Fees $4.

Filed in office, Dec. 13th, 1852.
(Signed) GEO. FISHER, *Sec'y.*

No. 340 for 744.—*Los Capitancillos.*

Third Seal—One Dollar.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.
(Rubrica.)

MICHELTORENA.
(Rubrica.)

Translation of original Deed from Justo Larios to Grove C. Cook, in No. 340.

{Aa. Maritima de Monterey.}

In the pueblo of San José Guadalupe, the fifth day of the month of Sept'r, 1845, before me, Antonio Ma. Pico, alcalde of the pueblo of San José Guadalupe, and before the assisting witnesses with whom I act, in the customary form, as also of the instrumental witnesses, who will be hereinafter named, personally appeared the citizen Justo Larios, and said that, for himself and in the name of his heirs and successors, and of those of them who might have any right, title, and interest, he sells and gives, by way of public sale, and perpetual alienation, one league of land, more or less, as explained in the title of the rancho which he possesses, situated in the jurisdiction of the pueblo of San José, to Grove C. Cook, naturalized in this department, and a resident of said pueblo, which land he acquired by a title given by his exc'y the governor of this department, on the 1st Sept'r, 1842, as appears from the documents which he has presented and which I certify that I have seen; which part of the rancho, with all the right which belongs to him, he sells to the said Grove Cook for the sum of three hundred dollars in cash, fifty more in cash to be paid within six months from this date, and twenty-five dollars in goods, this contract taking effect from this date; and he therefore cedes all the right of property, concession, and possession which he has in said land to the said Grove C. Cook, and, from this day henceforth and forever, he divests himself, and takes from his heirs and successors the dominion, possession, and all other rights whatsoever which they may claim to said land, and cedes them to the purchaser, in order that he may enjoy and possess it peacefully, and make of it the use which may suit him, may enter and vest said part of the land in himself, and may take the possession which he should have and which of right belongs to him. And for the confirmation and validity of what he may do in virtue of this sale, the vendor binds

his person and the property which he has and may require, and with them submits himself to the judgment and jurisdiction of the judges, whoever they may be, who ought to take jurisdiction of the case, that for his fulfilment they may compel and oblige him as by a sentence having the authority of a thing adjudged. He renounces all the laws in his favor.

In testimony of which, he executed and signed this before me and the assisting witnesses, for want of a notary public, the instrumental witnesses being the citizens.

ANTONIO MA. PICO.
JUSTO ⋈ LARIOS.

Asistencia: JUAN M. MARSH,
Asistencia: CARLOS MA. WEBER.

I, George Fisher, secretary of the board of United States commissioners to ascertain and settle the private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document on file in this office in case No. 340, Charles Fossat, and in my keeping and custody as such secretary.

Witness my hand this 30th July, 1853.

Filed in office, Feb. 10th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Opinion of the Board.

GUADALUPE MINING CO. }
vs.
THE UNITED STATES. }

For a part of the place called Los Capitancellos, in Santa Clara county.

By a stipulation filed in this case the testimony filed in case No. 340, involving the merits of the same original title which is in question in this case, together with the papers attached to the depositions, are to be used herein.

By that proof it is shown that a grant of the place called Los Capitancillos was made to Justo Larios by Governor Alvarado, in the first of September, 1842.

The testimony also shows that said Larios, by building a house, residing upon and cultivating the premises, fully complied with all requirements relative to inhabitance and cultivation.

No judicial possession of the place was obtained, but, on an examination of all the documentary evidence in the case, we are satisfied that the grant was one by metes and bounds, and that the same are sufficiently described in the grant to segregate the land and to enable a surveyor to trace the lines of the premises granted.

The equitable right of Larios to the premises is thus established, as well as his ability to make a conveyance of his interest to a third person.

The documentary evidence further shows that, by two mortgage sales and several mesne conveyances, and, finally, by deeds of partition, John B. Weller and James M. Jones became the owners of the portion of said premises which is claimed in this case, and Charles Fossat of the remainder.

(See opinion and decree in case No. 340.)

For the purpose of showing in themselves a title to the land thus possessed by Weller and Jones, the claimants in this case have given in evidence an indenture executed by them and several other individuals, dated September 7th, 1850. By this indenture, the signers organize themselves into a joint stock company, for the purpose of mining, and by it a part of the premises owned by said Weller and Jones (which was also claimed adversely by other parties to said indenture) was declared to be the property of said company, and releases were made by said parties of their interest therein for the benefit of said association. They have also given in evidence a duly certified copy from the recorder's office of a deed conveying the remaining portion of the land claimed in this case, made by said Weller and Jones to the president and two directors of said company, for and in the name of said company.

This deed is dated November 26, 1850.

They have also filed a duly certified copy of a deed to the same grantees, made by William Wiggins, dated March 15, 1851, relinquishing all his right to the premises.

Wiggins was a former owner of the property, and this deed was unquestionably to perfect the title of the grantees by discharging any interest which, in the complicated condition of the transfers of this title, might still remain to him.

Wiggins also joined in the first deed under which the petitioners claim, and he, as well as Weller and Jones, was made a party in interest in the premises conveyed as members of the joint stock company,

The petition is now filed by persons who claim to hold the land as trustees for the benefit of the members of said joint stock company. They are also named as such in both the deeds of conveyance above mentioned. A confirmation of their claim as now presented would then ensue, in accordance with the trust, to the persons really in interest, and a decree of confirmation will be entered accordingly.

"Confirmed."

Filed in office May 2, 1854.

GEO. FISHER, *Secretary.*

Decree of Confirmation.

GUADALUPE MINING COMPANY
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is valid, and it is therefore hereby decreed that the same be confirmed.

The land of which confirmation is hereby made is a part of the place called Los Capitancillos, originally granted to Justo Larios, and formerly occupied by him, situated in Santa Clara county.

The portion of said land which is hereby confirmed is bounded and described as follows, to wit: Commencing at a point on the north bank of the arroyo Seco, just four hundred yards distant, on the surface of the east from a point on the said bank of the arroyo Seco south 10″ W. of the entrance of the Guadalupe mine, which point of commencement is intended to be about 400 yards east of the entrance to said mine; thence north 10° east to the top or ridge of the hill on which the Guadalupe mine is situated, or to a line drawn east 10 south from the top of said Guadalupe hill; thence north 10° east to the bottom of the northern slope of said hill, or to a line drawn east 10° south from the bottom of said Guadalupe hill; north 10° east of the mouth of the mine; provided, however, that should the bottom of the hill be more than half a mile surface measurement from the top thereof, then this line is to be restricted to half a mile on the surface from the top of the hill; thence west 10° north to the arroyo Seco; thence up and around the arroyo Seco to the place of beginning; being the same premises described in an indenture made and executed by James M. Jones and others, on the seventh day of September, 1850, and recorded in the recorder's office of the county of Santa Clara, in book C of deeds, pages 429, 430, 431, 432 and 433. Also a certain other portion of said land, bounded and described as follows, to wit: being a portion of the northwest end of the rancho de los Capitancillos, containing six hundred and fifty superficial acres, more or less, and bounded on the north and west by the arroyo Seco; on the south by the land of the Guadalupe Mining Company, and on the east by a line drawn through the middle of the range of low hills running nearly parallel with the arroyo Seco, excluding two hills next adjoining the land of the Guadalupe Mining Company; and from the northern end of said hills running in a line northeasterly to the arroyo Seco, being the same land described in an indenture executed by James M. Jones and others on the 26th day of November, 1850, and recorded in the recorder's office of the county of Santa Clara, in book C of deeds, pages 427 and 428. The premises granted to said Larios being limited in its boundaries on the western portion thereof, to the Sierra and the arroyo Seco. It is the true intent of this decree not to exceed those boundaries,

and if any portion of the premises above described shall be found not to be embraced therein, such portions are hereby excluded from this confirmation.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office May 2, 1854.

GEO. FISHER, *Secretay.*

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing sixty-nine (69) pages, numbered from one to sixty-nine, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 744 on the docket of the said board, wherein the Guadalupe Mining Company is the claimant, against the United States, for the place known by the name of Cañada de los Capitancillos.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this fourth (4th) day of December, [SEAL.] A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed December 4th, 1854.

JNO. A. MUNROE,
Clerk U. S. Dis't Court.

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10th February, 1855.

THE GUADALUPE MINING COMPANY
vs.
THE UNITED STATES. } 744.

You will please take notice that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 25th day of November, 1854, the appeal in the district court of the United States for the northern judicial district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed March 20th, 1855.

JOHN A. MONROE, *Clerk.*

Appeal Notice.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10th February, 1855.

THE GUADALUPE MINING COMPANY
vs.
THE UNITED STATES. } 744.

You will please take notice that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 25th day of November, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed May 5th, 1855.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

To the Hon. District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
THE GUADALUPE MINING COMPANY, Appellees. } No. 142.

The petition of the United States, by their attorney, represents, that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the appellee was confirmed, as appears by reference to the records in the case:

That a transcript of the said records was filed in this court on the 4th of December, 1854; that a notice of appeal was filed on the 30th of March, 1855; and that the land claimed lies in said district:

That the said claim is invalid.

Wherefore the appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

A. GLASSELL, *Assist. U. S. Dist. Att'y.*

Endorsed: Filed March 21, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

District Court of the United States, for the northern district of California.

THE UNITED STATES, Appellants,
vs.
THE GUADALUPE MINING COMPANY, Appellees. } No. 142.

For answer to the petition of the appellants, the appellees, the said Guadalupe Mining Company, admit all the allegations thereof, except the allegation that their said claim is invalid, which they deny.

They say that their said claim is good and valid, and pray that the decision of the board of commissioners confirming it be affirmed by this court.

A. P. CRITTENDEN,
Att'y for Appellees.

Endorsed: Filed March 21st, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Stipulation to admit Depositions taken in No. 132.

District Court of the United States, for the northern district of California.

THE UNITED STATES, Appellants,
vs.
THE GUADALUPE MINING COMPANY, Appellees. } No. 142.

It is agreed that the depositions of Pedro Chabolla, José Fernandez, Nasano Galendo, José Lepulveda, Miguel Narvaez, Gabriel Cibrian, and Mariano Padilla, taken in this court in No. 132, The United States, appellants, vs. Charles Fossatt, appellee, shall be considered as taken in this case, and may be read in evidence on the trial hereof. April 8, 1856.

A. GLASSELL,
Acting U. S. Dist. Att'y.
A. P. CRITTENDEN,
Attorney for Appellees.

Endorsed: Filed April 11, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Certified copy of Deposition of Pedro Chevoya et al.

United States District Court, northern district of California.

SAN FRANCISCO, *Sept'r 5th*, 1855.

On this day, before John A. Monroe, a commissioner of the

United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Pedro Chavoya, a witness produced on behalf of the claimant in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows—his evidence being interpreted by H. Adler, a sworn interpreter:

Present, A. P. Crittenden, for claimant, and A. Glassell and A. Peachy for the United States.

Questions by A. P. Crittenden.

What is your name, age, and place of residence?

Answer. I am 67 years of age; reside in San José. I have lived in the city of San José since I was sixteen years of age, except from the age of sixteen until 1822 I lived at the Presidio, as a soldier, near San Francisco. I have been alcalde at San José for one year; at one time, I think the year 1835, and at another in 1846 or 1847—I do not recollect exactly. I know the "Rancho de los Capitancillos." *I* was owned by a man named Leandre Gallindo. (The answer is objected to by the counsel on behalf of the U. S.)

Question. Who first lived on the rancho after it was granted?

Answer. The same, with his family, and after them a man called Justo Larios lived there; then a man called Cook lived there; I lived about one league from there. I have known the rancho from the time I first came to reason—as far back as I can remember; nearly all my lifetime I have known the rancho, and have been upon it to cut wood, &c. I have gone there for cattle, and some of my cattle were on the rancho; have been there on a great many occasions, but don't recollect how often; I know the streams and hills, &c., well, in the locality. I know on this rancho the Sierra del Enciño; it runs from south to north; I don't know the exact direction, but it is nearly south and north. The principal reason of its being so named, because there was a tree distinguished from all others, and could be seen from all parts of the rancho; it was a very high tree; I suppose the tree was well known as a landmark; it was an enciño tree. The Sierra del Enciño was called sierra Acul, and in the middle of it was that tree. The tree is now there. The whole sierra is called the Sierra Acul, and in the middle of it is this tree, and that part of it is called the Sierra del Enciño. The house of Justo Larios and Cook was about the middle of the rancho, on the banks of a creek running from the hacienda of Almaden. In going from the stream on which the house stands to the Sierra del Enciño, you have to cross a hill, and going down this hill you cross another creek, and then begins the Sierra del Enciño. This hill is a continuance of low hills, which commence at Almaden and end at this creek. The Almaden mines are

on this low range of hills; I know it because we have been the discoverers of these mines; the Gaudalupe San Antonio mines are in the same range of hills, to the north of Almaden. Formerly the hills *now* called Cuchilla, and now it is called Nueva Almaden.

Question. Is the Cuchilla a part of the Sierra Acul, or Sierra del Enciño, or is it a distant and separate range? (Objected to by .)

Answer. It is entirely distinguished by itself; the Sierra Acul is higher than the Cuchilla de Almaden, and they are separated by a creek called on the lower part the arroyo de los Capitancillos, and the other part was called the arroyo de Gallinda. It is generally known now as the arroyo de los Capitancillos. A creek passes near the mines of the Guadalupe—the same creek I have spoken of; the water runs all in the same direction between the Sierra and the Cuchillas. The creek which was near the Guadalupe mines, is not the same as that which was near the Almaden. There are two creeks, one running round one end of the Cuchillas, and the other running round the other end and uniting below. The name of the creek nearest to the Gaudalupe, round the end of the Cuchillas, is called the arroyo de los Capitancillos; the other creek has no name, and the name of the creek which runs nearest the house of Justo Larios is the arroyo de Almeden. The Enciña is situated about half way from the foot of the hills going up the Sierra Asul. I know a place called the Sierra de los Enciñas, and it is called so because it is covered with oaks, and it divides two ranchos, those of Bernal and Capitancillos. The Sierra de los Enciñas is on the opposite side of the creek on which Justo Larios lived, from the Cuchilla de Almedan; it has no other name; they are called from the ranchos, respectively. The general name of the creeks after they join, is arroyo de los Capitancillos.

Cross-examined.

It is more than a league from the eastern to the western end of Justo Larios' rancho.

Question. What is the western boundary of Justo Larios' rancho? (Objected to .)

Answer. The Sierra Acul, on the sides towards San José; from Justo Larios' house to the first hills I have spoken of is a short distance; about one mile and a half. I know the Pueblos hills; I live near them; those hills belong to my rancho, which is called Pose de San Juan Baptisto. They are not the same hills as those between Beryesa and Bernal ranchos; on the one side they are called one name, and on the other another name. I know the hills which separate the rancho of Larios and Santa Terreas; they are called Capitancillos hills on one side, and on the other the Santa Teresa.

Question. Who do the hills belong to? (Objected to .)

Answer. On one side they belong to Justo Larios and Beryesus, and on the other to Bernal. Justo Larios I do not know ever claimed them as part of his rancho. I have been on those hills only a few days ago; on the top there is an oak tree, which is the mark of the dividing line of three ranchos, those of Larios, Bernal and Berresa; it is about the entry of the Puerta Suelo of the Capitancillos; it is on the east side. Justo Larios had cattle on the rancho. It is impossible for me to say how much level land there was; I never measured it, but I should think there was a league, more or less.

Cross-examined.

The whole land, comprising hills, was a league and one-half, more or less. This includes the hills of Capitancillos and the hills which separate the rancho from the Santa Teresa rancho. I know the hills of the mine; we were the discoverers of the mine; from the foot of the arroyo the top of the hills is about 1,500 varas; I mean in a perpendicular line.

Direct resumed.

The hills which divide the ranchos of Santa Teresa and de los Capitancillos are the same hills I have spoken of as the Enciñas. It is not generally known by that name; sometimes they call it the slaughter-house; I had a slaughter-house up there. None of it is called Sierra de los Enciñas; they may call it so now, because it is grown over with oaks.

The witness's attention being directed to that part of his testimony referring to the de los Enciñas, says: I called it that, because I know it to be covered with oak; but that is not, and never was the general or legitimate name. The range I speak of as Cuchilla de Almaden never was known as the Sierra de Enciñas; I know the tree I have spoken to be the boundary, because I have heard it said to be, but was not there when it was measured. The tree is not marked, that I know of; never heard Justo Larios say it was his boundary.

PEDRO CHABOYA.

Adjourned to Sept. 6th, 1855.

Deposition of Jose Fernandez.

September 6th, 1855. Present, A. P. Crittenden for claimant, and A. Glassell and A. Peachy on behalf of the United States.

José Fernandez, being duly sworn, deposes and says: I am fifty-six years of age, and live in Santa Clara; I have lived in California 38 years, between San Francisco and Monterey; have lived in both places, and in the country between; have lived in Santa Clara since 1836, and lived there before that time; I have been alcalde and secretary of the tribunal at Santa Clara; have known the rancho of Capitancillos since 1836. The children of Leander Gallinda

first lived on the rancho; afterwards Justo Larios lived there. When the children of Gallindo lived there there was a house and cattle, and a corral; don't know that they cultivated land. The father lived at the mission, and was mayordomo. Justo Larios had a house there, when he lived there; Justo Larios lived in a house which he built on the branch of a creek; Gallindo's children lived in a house on the same creek further down; can't tell the distance. I know the general outside view of the rancho. I know the name of some of the mountains and creeks and hills in the vicinity. Have often been on the rancho; don't know any hill called by Sierra del Enciño; know the Sierra de Acul; another part of the Sierra de Acul is called Enciño Copose, which is about half way up on the rise of the Sierra; it is called so because there is a tree which is higher than all others in the vicinity; the tree is an enciño, a certain kind of oak; the tree is well known by all the inhabitants in the vicinity, and can be seen at a great distance from Santa Clara, and also from the pueblo. I know the country between the creek on which is Justo Larios' house, and the Sierra Acul. I have only a short time since known the creek by the name of arroyo de los Alamidos; there is between the creeks of to the Sierra Acul a small plain; there is in one part of it some small hills; on the west side of Justo Larios' house there are some low hills; I have been along the foot of the hills; there is a creek there called the arroyo de las Capitancillos; there are some low hills between the house of Justo Larios and the arroyo de los Capitancillos. The creek rises in the Sierra Acul; one arm follows the Sierra, and three or four branches join in the same arroyo, and follow the foot of the Sierra, the distance from the low hills and the arroyo; one branch of the arroyo begins at the low hills; the hills are now called Cuchilla de Almaden; it had another name, Cuchilla de la nima de la Luis Cheavoya; never heard it called by any other names; never heard it called Sierra de los Enciños. I know where the Guadalupe and the Almaden mines are; they are in the same Cuchilla I have spoken of. I don't know in that vicinity any Sierra de los Enciños. I think Justo Larios went to live on the rancho in 1841 or 1842; he lived there till he sold it to Capt. Cook, and then Cook lived there.

Cross-examined.

Gallindo's house was on the bank of a creek opposite a hill, called la Majorona del Pueblo. I know the hill between the rancho of Santa Teresa and Justo Larios'; it is called Santa Teresa. There is an arroyo at the foot of the hill on which Justo Larios' house is situated; it is called the arroyo de los Alamillos. I don't know any arroyo which passes through the rancho of Berryesa; don't know the rancho; have been there once, but don't know the rancho. I went once to the house of Berryesa to arrest a man; have been

several times at Justo Larios' house. The arroyo de los Alamillos is called arroyo Seco when it dries up. There are hills on the northern side of Justo Larios' house; don't know their names. They may form a part of the ranch of Narvoez, but I don't know Cant't say how much level land there was; I don't know the limit of the rancho, only the locality. The creek was to the east, and the house to the west, on the same side as the Sierra Acul: the house of Justo Larios on the same side. The creek generally dries up about this season of the year. The arroyo de Capitancillos does not unite with the arroyo de los Alametos, unless they unite on the rancho Narvoez.

JOSÉ FERNANDEZ.

Deposition of Nazarie Galindo.

Nazarie Galindo being sworn, deposes and says: I am forty years of age, and live on the rancho of Agua Caliente, near the mission of San José; I have always lived in California; have lived in San José, Santa Clara, and San Francisco; my father's name was Leandro Gallindo; I know the rancho de los Capitancillos; I have known it since the year 1825, when my father established the rancho; I lived with my brother on the rancho; I lived there from '25 to '32, at which time I enlisted as a soldier and came to San Francisco. my father and his family lived there till he sold it to Justo Larios. We built a house there with corrals, and sowed wheat there; my father gave possession to Justo Larios. The house was at the entry of the Cañada, opposite a hill called Mojonera del Puebla. There was a creek called arroyo de las Alamillos there. The house was on the side towards the Sierra Acul. I know the names of the hills, &c., on the rancho; I know on the rancho a place called el Enciño; it is half-way up on the side of the Sierra Acul, near the rancho. There is a stream called arroyo los Capitancillos at the foot of the Sierra Acul; in going from the arroyo los Capitancillos we cross the hills where the mines are; the hills are called the hills of the mines. The place I speak of is called Enciño, because there is a very high tree distinguished from all other trees around there; the place is well known in the neighborhood; very often three or four gathered there for hunting cattle; we passed there very often; it is in the Sierra Acul. I do not know where the mines are; I only know they are on the Cuchillas; I mean by Cuchilla, los lonia de la Mina; they also call it los lonias de la Mina de Luis Chevoya; it was called this latter name because Luis Chevoya discovered the mines; never heard them called by any other name; never heard them called Sierra de los Enciños.

Question. Is this Cuchilla the same as the Sierra, Acul, or is it a separate range?

(Objected to.)

Answer. It is right at the foot of the Sierra, with a creek between. I know a creek running through the Beryesa rancho; it

joins the Alamillos; don't know the name of the junction; I know the arroyo de los Capitancillos; it comes out between the Sierra Acul and the Cuchilla de la Mina; it runs down and joins the arroyo de Alamillos near Narvoez rancho; don't know the name of the creek running through the Beryesa rancho; I know the arroyo Seco; it is the same as the arroyo de los Alamillos, and it dries up about this season of the year.

Cross-examined.

Don't recollect how old I was when I went to live on the rancho; it was in the '25, and I lived there till '32; have never returned to the place since my father sold it; the last time I was there, was in '33. Don't recollect when the mine was discovered; it was before I lived in the rancho. It was said that it was a quicksilver mine. I was at the mine once in '26 or '27, looking for cattle; Beryesas had not then come to their rancho; the names of the arroyos of which I have spoken were the arroyo de los Capitancillos; bore that name at that time. The water runs along the hills, and dries up below at a certain season of the year—that part of the arroyo which comes from the hills, to where it dries up; I don't know the name. The house was built on the arroyo Seco.

Question. Have you been on the rancho before you came here to testify?

Answer. No, not since '33.

Direct resumed.

NASARIO GALINDO.

Deposition of Jose Sepulveda.

José Sepulveda being duly sworn, deposes and says:

I am 47 years of age, and live in the pueblo of San José; have lived all my life in California, in the pueblo of San José; I know the rancho of Capitancillos; have been there very often, because we crossed there looking for cattle, and also for soap-root; I know the names of some of the hills, arroyos, &c., in the vicinity; I know the Enciño; it is half way up the Sierra Acul; I always heard it called by the old people, being in the middle of the Sierra Acul; the Sierra Acul is the same from which runs the arroyo de los Capitancillos, opposite the hills called the Cuchilla de la Mina; I have not seen the Gaudalupe mines; have seen the Almaden; the Almaden mines is in the hills called la Cuchillos de la Mina de Chevoya; I never heard it called anything but en Churchilla de la Mina de Chevoya; never heard it called Sierra de los Enciños.

his
JOSÉ ⋈ SEPULVEDA.
mark.

Witness: H'TO ADLER.

Deposition of Miguel Narvaes.

Miguel Narvaes being duly sworn for the claimants, deposes and says:

I am 45 years of age; reside on the rancho of San Juan Bautista, which belongs to my father, José Augustin Narvaes; I have been in California all my life—part of the time in San José, and the rest in said rancho; I know the rancho of los Capitancillos; it adjoins that of my father; I know the names of the different arroyos, hills, and mountains, on the rancho and in the vicinity of los Capitancillos; I know the place called el Enciño; it is on the Sierra Asul; it is so called because it is the most beautiful tree, and is seen the farthest off; there is a stream at the foot of the Sierra called el arroyo de los Capitancillos; it runs down to and joins the other arroyo between the hills; the water runs in it all the year, and below the hills it dries up; I know where the establicimiento of Santa Clara is; it is in Santa Clara near the pueblo; the arroyo of los Capitancillos separates the rancho of Augustin Narvaez from that of Justo Larios, on the lower part; this stream is also called the aroryo Seco; it runs between the Sierra Acul and the Cuchilla of the mines of Luis Chevoya; knows that the Almaden and Guadalupe mines are in the said hills; these hills, ever since I have known them, have been known by the aforesaid name; it has never been known by the name of Sierra, or Sierra los Enciños.

MIGUEL NARVAEZ.

Deposition of Gabriel Cibrian.

Gabriel Cibrian being duly sworn for the claimants, deposes and says:

I am thirty-six years of age, and live in the county of San Francisco, on the ranch of Doña Carmen; I have lived in California all my lifetime, in the pueblo of San José; I know the rancho de los Capitancillos; I have been on it often; I lived on the rancho of Berrysa, adjoining the rancho de los Capitancillos, three years, more or less; I know the names of hills and streams on the rancho de los Capitancillos and in the vicinity; I know a place called el Enciño; it is about midway from the foot of the Sierra Azul; it is out of the limits of the rancho de los Capitancillos, but near it, and can be seen from it; the Sierra Azul is from the rancho de Capitancillos, on the side where the sun sets; there is a stream at the foot of the Sierra called arroyo de las Capitancillos; there are hills on the opposite side of the arroyo from the Sierra, called the Cuchilla de la Mina de Luis Chabolla; never heard them called by any other name; I know where the Almaden mine is; it is on the upper part of the Cuchilla, where comes out the arroyo de las Alaminos; the water runs in the arroyo de los Capitancillos, inside of the Sierra, all the year round, and below it is dried up; the part where it dries up is called the arroyo Seco; there is a creek running through the rancho of Berryesa; it joins the arroyo de los Alamitos; I never knew the name; it is a small creek called arroyo Seco.

Cross-examined.

I lived on the rancho of Berryesa about the year 1834 or '35; I heard the Cuchilla named the Cuchilla de la Mina de Luis Chabolla, before I went to live on the Berryesa ranch; I had seen it before I heard it named; I was then 8 or nine years old; I heard Luis Chabolla and my father name it so; Luis Chabolla called on my father to examine the metal he had found there, because my father was from Guadalajara and knew what metal was; he took me to go into the cave to examine it; I did not hear it so named at that time, but did a short time afterwards; it was in San José I heard it; I passed by the rancho de los Capitancillos last year, going to the Almaden mine; I have had no conversation lately with any one, telling me the names of these places; I heard the depositions of these witnesses here.

GABRIEL SIBRIAN.

Deposition of Mariana Padilla.

Mariana Padilla being duly sworn for the claimants, deposes and says:

I am forty-five years old; I live in the pueblo of San José; I have lived all my lifetime in California, in the pueblo of San José and the rancho of San Juan Bautista, the rancho of Augustin Narvaez; I know the rancho de los Capitancillos; it adjoins the rancho of Narvaez; I know the names of the hills and streams on the rancho de los Capitancillos; I know where the arroyo de los Capitancillos is; it is between the Cuchilla de la Mina de Luis Chabolla and the Sierra Azul; on the lower part it adjoins the arroyo de los Alamillos. The water in the arroyo de los Capitancillos runs, at this time of the year, all along the hills, and below that it dries up; it bears this name through all its course. The Cuchilla de la Mina de Luis Chabolla is on one side of the arroyo de los Capitancillos; I know where the Sierra Azul is; it is the other side of this arroyo. I know a place called "El Enciño;" it is in the Sierra Azul, about midway of the Sierra, more or less; the Cuchilla of which I have spoken is called the Cuchilla de la Mina de Luis Chabolla; I never heard any other name for it; I never heard it called the Sierra, nor the Sierra de los Enciños. I know where the house is in which Justo Larios lived; it is on the bank of the arroyo de los Alamitos, on the side on which the sun sets—on the same side as the Sierra Azul; on the other side of the arroyo, beginning on the bank, are hills called Cuchilla de Santa Teresa; never heard any other name given to these hills. The Cuchilla extends in the direction of San José, to the point where the arroyo de los Capitancillos joins the arroyo de los Alamites; no part of this Cuchilla bears any other name; never heard it called any other name by the Bernals. I know where the Matadero de

Pedro Chabolla is; it is on this Cuchilla, on the upper part, where there is an oak grove.

his
MARIANO ✕ PADILLA.
mark.

Witness: HIPOLITO ADLER.

I, John A. Monroe, clerk of the United States district court for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, this 12th day of April, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Endorsed: Filed April 12, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Stipulation.

District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
THE GUADALUPE MINING COMPANY. } No. 142.

It is stipulated that the deposition of William J. Lewis, which has been taken on the part of the United States in No. 132, The United States vs. Charles Fossat, shall be considered as also taken on behalf of the United States in the above entitled cause, No. 142, and may be read in evidence on the trial thereof, subject only to such exceptions thereto as might be taken in the cause No. 132.

San Francisco, September 18, 1856.

WM. BLANDING,
U. S. Dist. Att'y N. D. of Cal'a.
A. P. CRITTENDEN,
Att'y for Guad. Mining Co.

Endorsed: Filed October 3, 1856.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Wm. J. Lewis.

United States District Court, northern district of California.

SAN FRANCISCO, *August 19th*, 1856.

On this day, before me, George Pen Johnston, a commissioner of

the United States for the districts of California, duly authorized to administer oaths, &c. &c., came William J. Lewis, a witness produced on behalf of the United States, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, the United States district attorney, on behalf of the United States, (A. C. Peachy, esq., present by request of U. S. attorney,) and A. P. Crittenden, esq., on behalf of claimants.

Questions by U. S. District Attorney.

Ques. 1. What is your name, age, and place of residence; when did you come to California; how long did you reside in the county of Santa Clara, and what was your public occupation there?

Answer 1. My name is William J. Lewis; I am forty-four years of age; I now reside in the city of San Francisco. I came to California in June, 1849; I resided in the county of Santa Clara from December, 1849, to June, 1855. I was county surveyor of Santa Clara county from the 7th of July, 1850, to June, 1855.

Question 2d. What is your profession; have you made any surveys of ranchos in this State from the original Mexican or Spanish title papers, and diseños or maps? If yea, state if you are familiar with such title papers, and the mode of locating the calls of the grants and diseños.

(The answer to the last interrogatory is suspended to enable the attorney for the claimants to question the witness as to his interest.)

Have you any interest in the result of this suit?

I have none.

Have you any interest in the matter in controversy in this suit?

I have none.

Have you ever made a survey of the land embraced in this grant; if yea, for whom?

I have made such survey; I made it at the request of Capt. Halleck.

Were you paid for making this survey; if yea, by whom?

I was paid by Captain Halleck.

Have you any claim for further compensation for making this survey, contingent upon the determination of any question which may arise in this suit?

I have not.

(The attorney for the claimant here objects to the last interrogatory propounded by the U. S. district attorney, on the ground that it is not admissible to prove a boundary by the opinion of a witness who may consider himself an expert.)

Answer 2d. My profession is civil engineering and surveying. I have made surveys of a large number of ranchos in this State from the original Spanish or Mexican title papers and diseños or maps, and I think I possess a good knowledge of the mode of locating the calls of the grants and diseños.

(The attorney for the claimant here asks the witness what paper he has before him, to which he refers when he answers the questions. The witness replies, that the papers to which he refers are copies of the interrogatories intended to be propounded by the U. S. district attorney.)

Question 3d. Are you acquainted with the land claimed in this case, with the original grant to Justo Larios, of which this is part, how long have you known it, and to what extent?

Answer 3d. I am acquainted with the land claimed under the grant to Justo Larios. I have seen the original grant to Justo Larios from the Mexican government. I have known the land since September, 1850, having at that time made a survey of the adjacent rancho of José R. Berreyesa. That rancho joins it on the eastern side.

Question 4th. Have you made a survey of the land granted to Justo Larios, of which this claim is part? if yea, state when. Look at the map here shown you, marked No. 1, Exhibit A. P. C., and state who made it, and when; what tract of land it represents, and from what data it is made.

Answer 4th. I made a survey of the land granted to Justo Larios in December, 1854, and January, 1855. The map now shown me was made under my direction; the lithographic lines on the map were made by Henry Steinegger, and also all the printed portion of the map was made by him. It was made from an original map drawn by Vitus Wackenreuder; the coloring, the numbering of the stations, and the explanation of the colors, and also the letters and lines marked in India ink, were executed by Vitus Wackenreuder. The whole has been done under my direction. The data upon which it was made were the surveys marked on the map by numbered stations, surveys along the summit and the northern base of the pueblo hills—a survey along the summit of the Laurel hills, and along the ridge east of the hacienda, triangulations to a large number of points outside and inside of the boundaries of the ranchos, angles of elevation and depression taken to a large number of points, and from topographical sketches of the features of the country, taken on the ground at various dates, from December, 1854, to May, 1855.

The tract represented on the map are the ranchos of Justo Larios, Berreyesa, the lands claimed by the New Almaden Company, and the land adjacent to said ranchos. The map now before me is a correct representation of the surveys I have made of these ranchos, and of the features of the country.

Question 5th. State how you surveyed and located the land granted to Justo Larios; describe its boundaries as called for by the original grant and diseño; also describe its boundaries as laid down on this map, and state whether the boundaries as laid down on this map correspond with the calls of his grant and diseño.

(The attorney for the claimant here objects to the last portion of the last interrogatory, as it is asking merely the opinion of the witness.)

Answer 5th. I now read the description of the title from the transcript of the original title on file in this case, page 20. The rancho is there described as being bounded by the arroyo Seco on the side of the establishment of Santa Clara, and by the rancho of citizen José R. Berreyesa, which has for its limit from the junction of arroyo Seco and the arroyo de los Alamites a line running in a southerly direction along the eastern base of the loma or low hill situated in the middle of the valley, and continued to the Sierra. It is also stated in this description that the land donated is one league, a little more or less; it also refers to the diseño; a copy of the diseño is also contained in this transcript, fronting page 12. I give this description from the Spanish, translated into English by myself. In the diseño, the junction of the arroyo Seco with the arroyo de los Alamites is not shown; the arroyo Seco unites with the arroyo de los Alamites, and from the arroyo de los Capitancillos about opposite the second "r" in the word arroyo, the name of the "Capitancillos" being above the junction improperly applied on the diseño. The arroyo Seco above referred to is the one which runs through the rancho Berreyesa, and is a different arroyo from the arroyo Seco which forms the western boundary of the rancho Justo Larios. No northern boundary of the rancho Justo Larios is named in the title, but from the diseño it is evident that it extends at least as far northerly as the arroyo de los Capitancillos. The southern boundary is the Sierra, the western boundary is the arroyo Seco, on the side of the establishment of Santa Clara, and the eastern the line of Berreyesa, already particularly described.

The land as located on this map is bounded by the arroyo de los Capitancillos on the north, by a line marked "O J," representing Berreyesa's western boundary on the east, by a line marked "I J K," 46, 45, 44, running near the foot of the Sierra on the south, and by the arroyo Seco on the side of the establishment of Santa Clara on the west; this tract contains one league of land, is shaded yellow on the map, and marked rancho de Justo Larios. (Exhibit A. P. C. is the map of which I speak.)

I first made a survey commencing at the junction of the arroyo Seco and the arroyo de los Alamitos, as shown on Exhibit A. P. C., No. ; thence following the several corners of the arroyo de los Capitancillos to its junction with the arroyo Seco on the side of the establishment of Santa Clara; thence up and along said arroyo

Seco to the base of the mountains at a station marked 44; thence along the northern base of the Sierra from station 44 to station 64 at Berreyesa's eastern line; thence in a straight line along the eastern base of the low hills situated in the middle of the valley, to the place of beginning.

This survey contained three thousand five hundred and twenty-nine acres, or eight hundred and eleven and $\frac{27}{100}$ acres less than one Mexican league.

The statement now filed, marked A X, Exhibit No. 2, contains the field-notes of this survey. The line I J K is drawn so as to include between it and the southern line of the survey already described, from stations No. 47 to 64, eight hundred and eleven $\frac{27}{100}$ acres, so that the tract shaded in yellow contains exactly one Mexican league.

The deficiency of $811\frac{27}{100}$ acres might have been taken north of the Capitancillos, or a portion of it to the north of that arroyo, and the residue south of the line from 47 to 64, along the base of the Sierra.

I think the boundaries, as laid down on this map, correspond to the calls of the title in the original grant, and to the accompanying diseño. The eastern boundary of the rancho Justo Larios, as located by me, is a straight line running from the junction of the arroyo Seco and the arroyo de los Alamitos, along the eastern base of the low hill situated in the middle of the valley, to the Sierra, which corresponds with the call of the grant; the western boundary is the arroyo Seco, on the side of the establishment of Santa Clara, as I have located the grant, and it corresponds with the call of the title; the northern boundary is the arroyo de los Capitancillos, which is not named in the title, but it is shown in the diseño which accompanies the title to be included in the rancho, or that at least to extend as far northward as the arroyo.

Examination adjourned until to-morrow, Aug. 20th, 1856.

Deposition not signed, by consent.

Examination resumed, August 20th, at 12 o'clock m.

Wm. J. Lewis recalled. Direct examination resumed.

The witness continues his answer to the last qustion, and deposes and says as follows: The southern boundary, as located on No. 1, Exhibit A. P. C., is the line, or is represented by the line marked I J K, 46, 45, 44, on the northern slope of the Sierra; it corresponds with the call of the grant. The tract of land so located, and shown on No. 1, Exhibit A. P. C., contains one Mexican league, which is the amount of the land called for by the titles.

Question 6th. Did you make another survey of the rancho with different boundaries? if so, describe such survey.

Answer 6th. I did, commencing at station 64 on the western boundary of Berreyesa's rancho; the course of said boundary was

continued southerly, in the same direction, across the Sierra del Enciño or Mine ridge to the arroyo de los Alamitos, at station 65: thence up the most northern branch of the arroyo de los Alamitos to station 90; thence to the summit of a high ridge, a spur of Mount Umunhum, at station 95; thence descending to a tributary of the arroyo Seco, which is named in the diseño as the arroyo Seco on the side of the establishment of Santa Clara, at station 98; thence along said tributary to its junction with the principal branch of the said arroyo Seco, at station 101; thence down and along said arroyo Seco, to station 44 of the survey already described.

There is included between the line of the survey last described, and the southern boundary of the first described survey from station 44 to 64, four thousand five hundred and four acres; and in the tract embraced in this survey and the survey first described there eight thousand and thirty-three acres, or one league and $\frac{855}{1000}$ths.

Question 7th. What is the character of the country lying between the headwaters of the arroyo Seco and the arroyo de los Alamitos? also describe the land at station 95, referred to in your last answer.

Answer 7th. There is a high unbroken ridge, a spur of Mount Umunhum, that forms the dividing ridge between the waters of the arroyo de los Alamitos and the waters of the arroyo Seco described in the diseño, as on the side of the establishment of Santa Clara. There is no opening or cañon leading from the waters of one stream to those of the other. Station 95 is at the summit of the ridge, and is one of the lowest points on the ridge; the spur from Mt. Umunhum declines from its summit to station 95; the crest of the ridge then rises slightly, being considerably irregular; then descends again to about the level of station 95; then rises rapidly to a peak marked on the map as the Peak of Mine Hill; my impression is, that the Peak of Mine Hill is 358 feet higher than station ninety-five.

Question 8th. Describe the character of the country in which the arroyo Seco and the arroyo de los Alamitos head, and the courses of these arroyos, and the character of the country through which they flow.

Answer 8th. Both these arroyos head high up in the Sierra Azul; they descend rapidly, and flow through narrow gorges, until they escape from the mountains and enter the plains. The general course of the arroyo de los Alamitos is northeastwardly from its head to about three quarters of a mile below the hacienda shown on No. 1, Exhibit A. P. C., where it leaves the mountains; it there makes an elbow, and runs in a west-northwest direction to a point where it enters the arroyo de los Capitancillos, at the western boundary of the rancho Berreyesa. The arroyo Seco, which is designated on the diseño as being on the side of the establishment of Santa Clara, has first a northeast direction from its head to station 101; it then

runs in a west-northwest direction, separating the Sierra del Enciño from the Sierra Azul to near station 130; thence in a northeasterly direction, or at right-angles to the general course of the Sierra, to its junction with the Capitancillos; near station 130 the arroyo Seco forms an elbow of about a right-angle, its previous course being parallel to the general direction of the Sierra, lying to the north of it, or between the stream and the Capitancillos.

Question 9th. Identify on the map marked A. P. C. the range of hills which on Justo Larios' diseño is named Sierra del Enciño, and which, according to that diseño, is the southern boundary of his rancho.

Answer 9th. It is the range of hills the northern base of which nearly corresponds with the red line marked on the map from station 64 to 47, and that portion of the red line M. L. represented on the map as the southern boundary of Berreyesa's rancho from "M" to its intersection with the arroyo de los Alamitos; on the east it is bounded by the arroyo de los Alamitos; on the south it is bounded partly by the tributaries of the arroyo de los Alamitos from station 65 to station 90, and partly by the spur connecting the Sierra del Enciño with Mount Umunhum—say from station 90 to station 98; and partly by the arroyo Seco, which has already been described as being on the side of the establishment of Santa Clara from station 98 to station 130; on the west it is bounded by the arroyo Seco and the valley of the Capitancillos—say from station 130 to station 47.

Question 10th. What is the character of the land on the rancho Justo Larios from the arroyo de los Capitancillos to the boundary indicated by the red line from station 64 to station 47, and thence to station 44?

Answer 10th. It is generally level land, interspersed with a few isolated low hills on the northern and western part of the rancho, and on the southern line there are a number of low hills connected by gaps or "porto suelos" with spurs from the Sierra; the topography of the land is correctly represented on the map marked "A. P. C.;" where there are no hills marked on the map the land is a plain.

Question 11th. Identify on map A. P. C. such parts of the arroyos de los Alamitos and Seco as are laid down on Justo Larios' diseño.

Answer 11th. The arroyo de los Alamitos is named the arroyo de los Capitancillos above the junction of the arroyo Seco in the diseño of Justo Larios; the part of the arroyo de los Alamitos indicated on the diseño of Justo Larios corresponds with that part of the arroyo de los Alamitos marked on No. 1 Exhibit A. P. C., extending from its mouth at station O to about its intersection with line M. L.

The arroyo Seco on the side of the establishment of Santa Clara,

as represented in the diseño, is indicated on the map A. P. C. as extending from station 44 to station 24, at its junction with the Capitancillos. A short distance above station 44, or near station 130, the arroyo Seco makes a short elbow, and the upper portion becomes nearly parallel with the direction of the Sierra. No such elbow or bend is represented on the diseño, but the direction of the arroyo Seco on the diseño is to the eastward of the course of a right line drawn from a point where it leaves the Sierra del Enciño at right-angles to the Sierra; this is true of the arroyo Seco from station 44 to station 24 as indicated on the map A. P. C., but does not correspond with the direction of the arroyo above station 44.

Question 12th. Give the points of the compass on the diseño of Justo Larios.

Answer 12th. The "Lomas Bajas" are represented on the diseño as being the north, the Sierra del Enciño on the south, the lindero del S'r Berreyesa on the east, and the lindero de Santa Clara on the west.

Question 13th. Which base of the Sierra del Enciño is represented on the diseño?

Answer 13th. It is undoubtedly the northern base. If the rancho was intended to include the Sierra del Enciño, the part of the arroyo Seco above station 130, or the great bend, would have been represented.

Question 14th. On which side of the range of hills marked on Justo Larios' diseño, "Sierra del Enciño," do the arroyos Seco and de los Alamitos take their rise?

Answer 14th. Both of the arroyos take their rise on the south of the Sierra del Enciño as marked on the diseño.

Question 15th. State your reasons for saying that the arroyos Seco and de los Alamitos rise to the south of the range of hills called on Justo Larios' diseño as Sierra del Enciño.

Answer 15th. On the diseño of Justo Larios there are no hills represented south of the Capitancillos until we come to the Sierra del Enciño; this is one reason, then, why the first ridge we come to south of the arroyo de los Capitancillos should be this Sierra. Again, the courses of the arroyos, as represented on the diseño, north of the Sierra del Enciño, correspond in general direction with the courses of the arroyos from the first range of mountains south of the Capitancillos; the Sierra del Enciño is also a part of a great range of mountains known as the Santa Cruz mountains.

Question 16th. Have you the field-notes of the second or additional survey you made? if so, please produce them.

Answer 16th. I have them.

(The field-notes are now produced and marked A Y, Exhibit No. 3, and annexed to this deposition.)

Examination adjourned until to-morrow, August 21st, 1856. Deposition not signed, by consent.

Examination resumed August 21st, 1856, at 11½ o'clock, a. m.
William J. Lewis recalled. Cross-examination.

Questions by A. P. Crittenden, Esq., Att'y for Claimants.

Question 17th. When did you first go to San José?

Answer 17th. Near the last of November, 1849.

Question 18th. Have you lived there ever since?

Answer 18th. No, I have not; I resided in and within three miles of San José until June, 1855, and from that date to the present in the city of San Francisco.

Question 19th. How far did you live from the tract of land about which you have testified?

Answer 19th. About eight miles from the angle of the ranch nearest to San José.

Question 20th. Do you understand the Spanish language?

Answer 20th. I have a partial knowledge of the Spanish language, but do not consider myself a Spanish scholar.

Question 21st. Do you speak Spanish?

Answer 21st. I do sometimes; I can speak it as well as can be judged from my previous answer.

Question 22d. Can you speak it well enough to carry on conversation with the native Californians, and to understand accurately what they say?

Answer 22d. I can generally speak it so as to make myself understood, and also can generally understand what they say; I can read it better than I can speak it.

Question 23d. When did you learn the language—before going to San José, or after your arrival there?

Answer 23. I learned a very little of the language prior to leaving the States in 1849, but the greater part of what I know of it I learned on the Isthmus, and at Panama, where I was detained upwards of three months on my way to California, during two months of which time I boarded in a Spanish family.

Question 24th. How long has it been since you have understood the language well enough to converse in it?

Answer 24th. I learned the language well enough to converse in it before I left the Isthmus, and at that time could speak it much better than I can at present, in consequence of recently having little intercourse with the Spanish population.

Question 25th. While residing in the county of Santa Clara did you associate much with the native Californians?

Answer 25th. In making surveys during the earlier part of my residence there I associated with or was thrown amongst them a great deal, the native population forming a large proportion of the people of San José at that time. I have frequently conversed with them; latterly I have had but slight intercourse with them in consequence of the predominance of the American population.

Question 26th. Have you been pretty well acquainted with the people of Santa Clara county since the time you went there to live?

Answer 26th. I have been.

Question 27th. About what proportion of them were native Californians, speaking only the Spanish language, when you first went there?

Answer 27th. I should think two-thirds of the residents of the county.

Question 28th. Amongst those speaking the English language were there many who had been long in California?

Answer 28th. There were very few, indeed, and scarcely any of those that could not speak the Spanish language.

Question 29th. Were there any amongst them who were in California prior to 1843, so far as you know?

Answer 29th. There were none as far as I know.

Question 30th. What ranchos in this State have you surveyed from the original Spanish or Mexican title papers and maps?

Answer 30th. I have surveyed the ranches of "San Ysidro," belonging to or claimed by Gilroy and others; "Las Animas," claimed by Sanchez and others; "El Rinconada de San Francisquita," claimed by Antonia Ma. Mesa; "Las Berreyas," claimed by Mariana Castro; "La Cañada de los Capitancillos," or "San Vincente," claimed by Berreyesa; "Las Positas," claimed by Livermore; "El Ulistan," claimed by Hoppe and Watson; "La Barranca Colorado," claimed by the children of Judge Ide; "Los Saücos," claimed by Chard; "San Antonio," claimed by the heirs of Prado Mesa; "El Tito," claimed by the heirs of Alviso; "Los Coches," claimed by the heirs of Antonio Suñol; and "El Cañada del Rincon del Rios San Lorenzo de Santa Cruz," claimed by Hensley and others. These are all the ranches I now recollect having surveyed.

Question 31st. What was the character of the surveys which you made of these ranches; were they mere private surveys made at the request and under the instructions of the claimants, or were they official surveys made under the authority of the United States; and if the latter, were they approved; and if so, by whom and how?

Answer 31st. Official surveys are only made under the authority of the United States Government when the title to the land has been finally confirmed. I have made one such survey, viz: of the rancho last named in my answer to the previous question, which was surveyed by me as deputy U. S. surveyor, under instructions from Col. J. C. Hays, surveyor general of the U. S. for the State of California. The ranchos "Las Positas," "La Barranca Colorado" and Los Saücos were surveyed by me in the capacity of deputy U. S. surveyor, under instructions from Col. Hays, and all the surveys made as deputy U. S. surveyor have been approved by the surveyor general; the last three surveys were preliminary and not

final surveys; none of the other surveys are official, but were made on the application of parties interested, and were paid for or agreed to be paid for by them. Sometimes the boundaries to these last surveys were left entirely to my discretion by the parties interested; in other cases the land was surveyed as claimed by them.

Question 32d. What is the name of the tract of land about which you have testified as delineated on the map marked No. 1, Exhibit A. P. C.?

Answer 32. It is called rancho de los Capitancillos.

Question 33. What is the meaning of "rancho de los Capitancillos" translated into English?

Answer 33. "Rancho of the little Captains."

Question 34. Do you know from what the name was derived?

Answer 34. I do not; I've heard, but I've forgotten.

Question 35. Did you make no inquiry upon the subject previous to undertaking to locate the grant?

Answer 35. I had known the name since September, 1850, but the explanation which was then given me was in connection with some trivial circumstance, was not altogether satisfactory to me at the time, and, I think, had no connection with the boundaries or survey of the land, further than that this rancho was a part of the valley which bears the name of the Cañadas de los Capitancillos; that valley includes the ranchos of Justo Larios and Berreyesa.

Question 36. Did you never hear it stated as a fact, well known amongst the old residents of the county, that that tract of land took its name from the circumstance that several Indian chiefs lived upon it, and had a rancho or establishment upon the stream which you have marked upon No. 1, Exhibit A. P. C., as the arroyo Seco, and above the bend, and somewhere between stations 100 and 123?

Answer 36. I do not recollect that I ever heard the circumstance stated, and I do not see that that affords an explanation of the name.

Question 37. If a particular portion of the tract was actually occupied by the Indian chiefs, and known as Los Capitancillos, might it not explain how the name came to be given to a larger tract of rancho de los Capitancillos, and would not the location of the establishment of the Indians be a material fact in determining the location of the whole tract of land, which took its name from that establishment?

(The att'y on behalf of the U. S. objects to this interrogatory, on the grounds that it seeks to establish, by parole testimony, boundaries different from the calls of the grant and the diseño.)

Answer 37. If a particular portion of the tract was actually occupied by the Indian chiefs, and known as Los Capitancillos, it

affords a satisfactory explanation how the name came to be given to the larger tract known as the rancho de los Capitancillos. It does not strike me that the location of the establishment of the Indians was necessarily within the tract, unless such location had been marked on the diseño, or was the residence of the proprietor to whom the land was granted at the time the grant was made; in the latter case, it would afford a strong presumption that it was intended to be included in the grant, but not sufficient to authorize the extension of the land entirely beyond the limits of the diseño.

Question 38. In what county is the rancho de los Capitancillos situated?

Answer 38. In the county of Santa Clara.

Question 39. Who employed you to make the survey of that rancho, about which you have principally testified?

Answer 39. Capt. Halleck.

Question 40. Who is Captain Halleck, where does he reside, and in what business is he engaged?

Answer 40. Capt. Halleck is a lawyer; resides in the city of San Francisco; a member of the firm of Halleck, Peachy & Billings.

Question 41. Do you know whether he employed you to make this survey on his own account, or on account of others; if the latter, for whom?

Answer 41. I am informed that Capt. Halleck is director general of the Almaden Mining Company, and the survey was made by the advice of Mr. Peachy, one of the attorneys of the company. Capt. Halleck employed me to make the survey, which is shown on the map marked "No. 1, Exhibit A. P. C.," to be used in and about the business of the mine, and I was paid for making the survey by Capt. Halleck, (I am informed,) on behalf of the company.

Question 42. Who were with you when you made this survey of the rancho de los Capitancillos?

Answer 42. The flagman, charman, and axeman were with me during the whole survey, and assisted me in making it; I am unable to give their names. Mr. Peachy was also with me once or twice, and remained about an hour each time. Mr. Young, a superintendent of the mine, brought us our dinners on two or three different occasions. I do not recollect whether Capt. Halleck was on the ground or not at any time, nor do I recollect that any other person was with us.

Question 43. Were any papers furnished you by which you were to be guided in making the survey; if yea, what papers, and by whom?

Answer 43. I had a copy of the diseño furnished me by Mr. Peachy. I also saw and read the title-papers or grant accompanying the espediente, at the office of the surveyor general.

Question 44. What diseño and grant do you refer to?

Answer 44. I refer to the diseño a copy of which appears in the

transcript from the board of land commissioners in this case, and about which I have heretofore testified on my direct examination, and to the grant contained in the expediente of Justo Larios. The grant from which I read in my direct examination appears to be an exact copy of the one which I examined while making the survey, with the exception of two errors in spelling.

Question 45. Had you no other papers with you on the ground than the diseño of Justo Larios?

Answer 45. I had none that I recollect.

Question 46. How long was it before you commenced this survey that you examined the grants in the surveyors general's office?

Answer 46. But a few days.

Question 47. Did you trust to your recollection of the grant for the description which it contained of the land?

Answer 48. I trusted to my recollection, with the exception of the assistance derived from the copy of the diseño I had with me.

Question 49. Before commencing the survey, did you make any inquiries in regard to the names or designations of natural objects in that vicinity? If yea, of whom?

Answer 49. I had been familiar with the names of the arroyo de los Capitancillos, the two arroyo Seco and the arroyo de los Alamitos, for several years. I was also familiar with the name and position of the loma marked on the map. I inquired of several persons of the proper translation of the words "falda de la loma," and I examined the dictionary of the Spanish academy on that point. I am satisfied that I have given to it the correct construction.

I also have known the Pueblo hills, the rancho of San Juan Bautista, and the prominent points generally represented on the map, having resided in the county for several years. These points became known to me prior to the time when I commenced the survey.

Question 50. Look at the map marked No. 1, Exhibit A. P. C., and designate at what point you commenced your survey.

Answer 50. I commenced the survey at a point marked "O," at the junction of the arroyo Seco and the arroyo de los Alamitos.

Examination adjourned until to-morrow, August 22d, 1856.

Deposition not signed, by consent.

Examination resumed August 22d, 1856, at 10 o'clock a. m.

Wm. J. Lewis recalled. Cross-examination continued.

Questions by A. P. Crittenden, Esq., Attorney for Claimant.

Question 51. Commencing at the point marked O on the map marked No. 1, Exhibit A. P. C., how do you run the eastern boundary line of the rancho de los Capitancillos, according to your ideas of its location?

Answer 51. It is run from the point O in a straight line to the

eastern base of the hills situated in the middle of the valley to the point marked "falda de la loma" on the map marked No. 1, Exhibit A. P. C., and this straight line is continued to a point marked "I" on the northern slope of the most southern range of mountains on said map.

Question 52. Why do you stop that line at the point marked "I?"

Answer 52. Because the rancho extends eastwardly and westwardly from the line "O I" already described to the arroyo Seco on the west, and the rancho extends to the north at least as far as the arroyo de los Capitancillos, and it could not extend more southwardly than the line "I J K," 46, 45, 44, of which I is the southern termination of the line "O J," without including a greater quantity of land than one league, and also because I think the diseño shows that the southern line runs near the northern base of the Sierra.

Question 53. Where is the point "I" situated in reference to the Sierra?

Answer 53. It is situated on the northern slope of the Sierra, about two-fifths of a mile from its base.

Question 54. In locating the eastern line O I, what are you governed by, the diseño or the description contained in the grant? The eastern line, as marked on the diseño, evidently represents the line of Berreyesa as running much further to the eastward than the description contained in the grant; but the description in the grant fixes positively for the eastern boundary the line running from the junction of the two arroyos (Seco and de los Alamitos) by the "falda de la loma."

Question 55. Then, in regard to the eastern boundary line, you disregard the diseño, and consider it as controlled by the grant?

Answer 55. That is true.

Question 56. According to the grant, how far is that eastern line which starts at the point O and passes by the eastern base of the loma to extend?

Answer 56. To the Sierras.

Question 57. Then you stop at the point "I" because you have reached the Sierra?

Answer 57. Yes, and for the other reasons heretofore given.

Question 58. In your opinion, does not that line strike the Sierra before reaching the point "I?"

Answer 58. Yes, it strikes it at the point marked 64 on the map. It strikes the base of the mountain there.

Question 59. Then from 64 to "I" your line is outside of the grant; is it not?

Answer 59. I think that a fair construction of the title would allow it to come up a short distance on to the spur of the Sierras, that the line I J K may be regarded as the most southern loca-

tion of the southern line of the grant, and the red line from 64 to K as the most northern location of the southern line of the grant. In the northern location the deficiency in quantity would be made up on the north of the arroyo de los Capitancillos; consequently, I do not think the portion of the line from 64 to "I" necessarily outside the grant.

Question 60. When a Sierra is given as one of the boundaries of a tract of land which you were called on to locate, would you take the base or the top of the Sierra, or any intermediate line, as the true boundary line?

Answer 60. In those surveys that I have made in California, I have generally taken the base of the Sierra, where the Sierra was called for as a boundary, unless the title called especially for the crest of the Sierras. Sierras generally throw out spurs of mountains, extending irregularly into the plain or lower country, and the base of a Sierra is, in consequence, a somewhat indefinite line, at it is difficult to say when the spurs of the Sierras become low enough to cease to be regarded as a part of the Sierras, and to be properly classed as lomas; such, for example, is the case in the land included between the line "I J K," and the red line from K to 64. In the locations of the grants all the conditions of the grant and diseño are taken into consideration, and the quantity of the land granted determines the positions of doubtful lines, which can with propriety be placed in positions to give the exact quantity of land called for in the titles. I would not take an intermediate line, and have never done so in any survey which I have made. By an intermediate line I mean a line running higher on the slope of the mountain than one which would cross such spurs of the Sierra as might be denominated "lomas."

Question 61. Do you mean to say, where a call is for a Sierra you would take the base, unless it was necessary to take some other line, in order to make out the quantity, and that in this last case you would run the line higher or lower, so as to give the quantity called for?

Answer 61. I did not mean to say any such thing; but I meant to say that I would follow the base of the Sierra, and that the only question was as to where was the base of the Sierra, which is a matter of some doubt in a broken country, and that where such doubt exists I would use the quantity called for in the grant to assist me in ascertaining what land was intended to be granted, and how far the grantor intended the grant should extend.

Question 62. If in this case it had been your intention to determine as accurately as possible the base of the Sierra, where would you have run the line, not taking the question of quantity into consideration at all?

Answer 62. I would have run the line from station 44 to 64, marked on the map No. 1, Exhibit A. P. C., and did run it for that purpose; this line is marked in red from stations 47 to 64.

Question 63. In locating this land, with the grant and diseño before you, which boundary line would you first establish, and why?

Answer 63. The order of the calls, as named in the title, is first the Sierra, second the arroyo Seco on the side of the est blishment of Santa Clara, third the western boundary of Berreyesa, and fourth the contents of land, and fifth the diseño; the best defined lines are the western and eastern boundaries, the arroyo Seco being the second call, and the rancho Berreyesa the third, in the title.

The Sierra is the first, and preference should have been given it, were it not that the base of the Sierra is not so capable of absolute determination as the second and third calls in the titles. The northern boundary must be determined solely by reference to the quantity of land, diseño, and the three other boundaries called for by the grant; there are two lines of nearly equal value in determining the location; the arroyo Seco has preference over the eastern boundary of Berreyesa's rancho, not only because first named in the title, but because more definite, indeed absolutely so, while the eastern line has a small degree of uncertainty in consequence of the difficulty of determining the exact position of the "falda de la loma;" the ground being somewhat inclined from that point to the arroyo de los Alamitos, and a small difference in the location of that point would make a much greater difference at the southern extremity of the Berreyesa boundary.

Question 64. Then you would first run the western boundary, then the eastern boundary, then the southern boundary, and be governed in the location of the northern boundary by the diseño, and by the quantity called for in the grant; is that what you mean?

Answer 64. That is the order in which I would give the lines and calls the preference; it is substantially the mode in which I would survey the land, the variations in the order of actually running the lines on the ground being only made as a matter of personal convenience, and to avoid travelling across the rancho unnecessarily.

Question 65. In what order would you actually run the lines on the ground?

Answer 65. I would commence at the junction of the arroyo Seco with the arroyo de los Capitancillos, at station 24; I would run that which is the western line first; I would run a line at the base of the Sierra, which is the southern line, second; I would run Berreyesa's western, which is the eastern boundary of this rancho, third; I would then run a line along the arroyo de los Capitancillos to the point of beginning; calculate the area of the survey. If there was a deficiency in quantity, I would take it to the north of the Capitancillos, unless I was satisfied that the southern line might admit of being thrown further south; if there was an excess of

quantity, I should cut it off from the least valuable part of the land, as I consider that the ranchero is entitled to select the good land within his boundaries, not exceeding the contents of his grant.

(The attorney on behalf of the United States here objects to the latter portion of the last answer, which expresses the opinion of witness, as to rights of claimants under Mexican grants to make selections of land within their general limits.)

Question 66. How would you ascertain which was the least valuable portions of the land, and how that portion should be cut off; I mean would you determine it yourself, or leave it to the claimant?

Answer 66. In making a final survey for the United States, I should leave it to the claimant; I would not feel authorized to leave out his house and improvements which he occupied at the time the grant was made.

(The attorney for the U. S. objects to the foregoing last question and answer, for the reasons assigned to last interrogatory previously objected to.)

Question 67. In making a survey, not a final survey for the United States, but to locate the land according to your own ideas, as to how it should be located, in what way would it be determined, in such a case, which was the least valuable portion of the land?

(Same objections by U. S. att'y as to the last interrogatory foregoing.)

Answer 67. If practicable I should consult the ranchero; if not, I should exercise my own judgment as to the value of the land.

Question 68. In your opinion, when there is a greater quantity of land within the boundaries than that which is specified in the grant, has the grantee a right to designate in what part of the tract he will take the quantity designated, subject only to the restriction you have mentioned, that his improvements shall be included?

(Objected to by att'y on behalf of U. S. for the reasons last assigned.)

Answer 68. I think he has, only that he must take it in a compact form, and not in isolated portions.

Question 69. In this case, the line of the base of the hills which you call the Sierra may be determined with considerable accuracy, may it not; and has it not been so determined by you, by the line marked on map "No. 1, Exhibit A. P. C., 44 K 64?"

Answer 69. I think so.

Question 70. Is there not some inconsistency between two of your answers which you have made? In one of which you say that if there were a surplus in this grant, you think the grantee should have the right to select his land, subject only to the restriction that his improvement should be included; and in the other, that you consider the western, southern and eastern boundaries, as deter-

mined by the grant and diseño, as being the proper boundaries, and would fix the northern boundary by reference to the diseño and the quantity called for in the grant.

Answer 70. I see none, because there can be no excess, inasmuch as there is no northern boundary named in the grant. If there had been included more land than called for, making the Capitancillos the northern boundary, the diseño would have conflicted with the grant; but such was not the case, and therefore I believe my answers to have been entirely correct.

Question 71. In locating a tract of land, would you always confine the grantee to the exact quantity named and reject the surplus, whatever might be the apparent intention of the grant?

(Objected to by the att'y on behalf of the U. S. for the *objections* last assigned.)

Answer 71. I would in all cases, except where juridical possession had been given by the Mexican government to the ranchero, prior to the acquisition of the country by the United States.

Question 72. If all the boundary lines of a grant are clearly designated in the grant and diseño, and do not include the quantity named in the grant, would you in locating it consider yourself authorized to go outside of the boundary lines in order to make up the quantity?

Answer 72. I would not.

Question 73. What is this grant to Justo Larios; is it a grant of all the land within certain designated boundaries, or a grant of one league, if so much is contained within certain designated boundaries?

Answer 73. It is a grant of one league, a little more or less, with the boundaries on the east, west and south defined, and with the northern boundary undefined.

Question 74. Then if, upon running the western, southern and eastern boundaries according to the grant, there is found to be a deficiency of eight hundred and eleven $\frac{87}{100}$ acres, how is that deficiency to be made up?

Answer 74. If by connecting the northern extremities of the eastern and western boundaries, *and* you find between that and the Sierra an amount of land $811\frac{27}{100}$ acres less than one league, the deficiency would be made up by producing northward the eastern and western boundaries sufficiently far to include between a line connecting their extremities and the line already described the deficiency of $811\frac{27}{100}$ acres. It very frequently is the case in Mexican grants, that only a small part of a boundary is given—enough, merely, to fix the extension of the rancho in a particular direction; sometimes only a tree or a lake, or a house, or a single line or boundary; there is, therefore, nothing in this grant to prevent the extension of the eastern and western boundaries northward, as suggested in the first part of this answer.

Question 75. The mode you have given in your answer in the last cross-interrogatory is a proper one, is it not, of making good the deficiency in quantity, if that deficiency exists and can be made good at all?

Answer 75. I think so.

Question 76. Then it is not the proper mode of making good that deficiency, to change the southern line designated on map marked "No. 1, Exhibit A. P. C.," "44 K 64," which line you have testified has been fixed by the grant, and can be, and has been, located with considerable accuracy?

Answer 76. The line designated was fixed with considerable accuracy, but there is room for a difference of opinion as to the base of the Sierra, to the extent of the difference between this line and the line I J K. The nature of the ground gives room for this margin; the line I J K is the most southern location, and was regarded as the one most favorable to the grantee. I think there would be no impropriety in taking the line 44 K 64 as a southern boundary. Indeed, on consideration, I should give that line the preference, and make up the deficiency in quantity north of the arroyo de los Capitancillos.

Question 77. Then you do not think it the proper mode to make up the deficiency by throwing the line marked 44 K 64 further south?

Answer 77. I do not think it absolutely improper or unallowable to throw it a little further south, but I consider it more proper to take it for the base of the Sierra and southern boundary of the rancho; no two surveyors would probably run the base of the Sierra in precisely the same place.

Question 78. Did you not run the line 64 K before you ran the line "I K?"

Answer 78. I did, and I ran it also for the base of the Sierra.

Question 79. If you were making an official survey for the United States, and were running the line to mark, according to the best of your judgment, the base of what you call the Sierra, would you not run it as you have done it on the line "64 K. 44?"

Answer 79. I would.

Question 80. Then, according to the best of your judgment, point 64, and not the point "I," is the point at which the eastern boundary line strikes the base of what you call the Sierra?

Answer 80. It is.

Question 81. You have stated that the northern boundary of this tract of land is not determined by the grant and diseño; please to look at the diseño and the words of description in the grant, and say whether, upon reflection, you are not in error upon that point?

Answer 81. I have examined the grant and diseño, and do not discover any error.

Question 82. Please give an exact translation from the grant of the words which determine the eastern boundary of this land.

Answer 82. I give it as follows: with the rancho of the citizen José Reyes Berreyesa, which has for its limit the angle which is formed by the arroyo Seco, and that of the Alamitos in a southerly direction, to the base of the low hill situated in the centre of the valley to the east until it comes to the Sierra."

Question 83. Would that line produced northward be running southward from the starting point?

Answer 83. It certainly would not.

Question 84. What is the meaning of the word "angulo," or "angle?"

Answer 84. It means a corner or the junction that is formed by two lines, either straight or curved, and in geometry the inclination of these lines.

Question 85. What name has the stream or arroyo formed by the junction of the two arroyos designated on map marked No. 1, Exhibit A. P. C., as arroyo de los Capitancillos and arroyo Seco, below that junction?

(The attorney on behalf of the U. S. objects to this last interrogatory on the ground of irrelevancy.)

Answer 85. It is called the arroyo de San José de Guadalupe.

Question 86. If the arroyo de los Capitancillos is not the northern boundary, but you can cross that arroyo for the purpose of making an addition to the tract in order to give the full quantity of land called for in the grant, would that addition answer the description in the grant; would it be bounded on the west by the arroyo designated as the arroyo Seco; would it be bounded on the east by the line of Berreyesa, which terminates at the point formed by the junction of the two creeks, or would it be bounded by the stream formed by the junction of these two creeks, the arroyo Seco and Alamitos?

Answer 86. It would not, neither would any small portion of a tract be bounded by lines given for the whole tract; the creek formed by the junction of the arroyo de los Alamitos and the arroyo Seco would form the southern boundary of the tract, added to make up the quantity of land; the boundary on the west would be the extension of the general course of the arroyo Seco, and the boundary on the east would be the extension northward of Berreyesa's western boundary, and it would be bounded on the north by a line along the Pueblo hills parallel to a straight line drawn from station O to station 24.

Question 87. From the fact that this tract of land is bounded on the east by a line terminating at the junction of two streams, is there not a presumption that the stream formed by the junction of these two was intended to be the northern boundary of this tract, especially when it is considered that there is nothing either

in the grant or diseño to show that the tract extended across the stream, and that if it were to cross the stream it would no longer be bounded either on the east or the west by the lines which are declared in the grant to be its eastern and western boundaries?

Answer 87. It is not certain that the junction of the arroyo de los Alamitos and the arroyo Seco is the northern termination of Berreyesa's boundary, Berreyesa's boundary on the east being the Pueblo hills; the Pueblo hills are also represented on the diseño, but there marked "Lomas Bajas," or low hills; it is not certain from the diseño whether the northern boundary of the rancho did or did not extend to the lomas Bajas, or low hills, as they generally extend nearly down to the Capitancillos; no large amount of land could be included between their southern base and the Capitancillos; but if a line along the summit was taken it would include between that and the arroyo de los Capitancillos probably a little more than would make up the required quantity; the presumption from the reading of the grant and from the diseño is, that it was intended to make either the arroyo de los Capitancillos, or a line a little to the north of it, the northern limit of the ranch—most probably, I think, to include the little valleys between that and the bases of the "Lomas Bajas." My reason for thinking so is, that the land to the north of the lomas Bajas is claimed by the proprietors of "Santa Teresa" rancho.

Question 88. Even if this tract of land did cross the arroyo de los Capitancillos and extend to the lomas Bajas delineated on the diseño, there being no call in the grant for the top of the hills as the boundary, would not the line of their base be taken as the boundary?

Answer 88. I think a line following, generally, the base of the low hills, would in that case be taken as the boundary, if, by doing so, the required quantity of land could be obtained; I think the grantee entitled to one league of land; and the three other boundaries being fixed, he has a right to go northward until he obtains the quantity of land granted to him, unless he passes entirely beyond the limits of his diseño.

Question 89. Does the diseño in this case show any object or line north of the "Lomas Bajas?"

Answer 89. It shows no point beyond the "Lomas Bajas."

Question 90. Then if the arroyo is not the boundary, the low hills certainly are—is not that so?

Answer 90. I think it probable they are, and it is certainly improper to extend beyond them.

Question 91. Is there any reason whatever, either from the grant or diseño, to think otherwise?

Answer 91. I think not.

Question 92. Is there any call in the grant or diseño for the top of the low hills as a boundary?

Answer 92. None.

Question 93. Then, according to the principle declared by you in a previous part of your cross-examination, would not the line of the base of these hills be the boundary?

Answer 93. The principle alluded to, I presume, is the one in which I stated that by the Sierra I understood that it meant the base of the Sierra; in this case we have no description in the title calling for the low hills as a boundary, and we have nothing but the representation of the lomas Bajas on the diseño to guide us in our location; I think, under these circumstances, the ranchero has a right to include so much of them as will make up his quantity. I do not feel absolutely certain on this point.

Question 94. In making a location of land from a grant and diseño, do you not consider the diseño as part of the grant?

Answer 94. I do; it is made part of the grant by the title.

Question 95. Then, as to taking the base of a range of hills as a boundary where there is no call for the top, what difference does it make whether the range is called for by the grant or by the diseño?

Answer 95. The diseños were presented by the petitioners for the grant, and frequently represent a much larger portion of land than what was granted; the grants specify the boundaries of the land granted, the quantity of land granted, and refer to the diseños as exhibiting its locality. I regard the grants as the primary evidence in the location; the diseños are secondary, and we must endeavor in our location to conform to the grant as superior evidence.

Question 96. Your answer might be sufficient in case of conflict between the grant and diseño; but take the case here presented, in which, according to your understanding, there is no northern boundary given by the grant, while on the diseño there is a range of hills designated, which you conceive to be intended as a boundary; please to state why the rule as to the base of the hills being taken as the boundary should not apply.

Answer 96. I am not satisfied from the diseño that it was intended to make the "Lomas Bajas" the boundary; but I am also satisfied that there would be no impropriety in making the base of these hills the boundary, provided there was sufficient quantity of land contained between this line and the base of the Sierras to make one league; I do not think the evidence would justify us in giving the ranchero less than his required quantity; I think it would be an illiberal construction, although probably perfectly legal.

Question 97. Then, in determining from the diseño whether or not the "Lomas Bajas" were intended to be the boundary, would you be governed altogether by the consideration of quantity?

Answer 97. From the diseño and title I would make either the arroyo de los Capitancillos or a line along the base of the "Lomas Bajas," or a line including part of the "Lomas Bajas," my northern

line, and in the location of this line I would be governed by the contents of the rancho.

Question 98. About what quantity of land is there between the arroyo de los Capitancillos and the line of the "Lomas Bajas?"

Answer 98. About two hundred and forty acres.

Question 99. You say the diseños frequently represent a much larger portion of land than is granted; did you ever before see one which represented a less quantity?

Answer 99. Yes; I have seen diseños representing a less quantity of land than was called for by the title. Take for example the grant of the "Potrero de Santa Clara," held by Commodore Stockton, and the grant of "El Rincon del rio San Lorenzo de Santa Cruz," held by Major Hensley and others; the latter calls for exactly two leagues, while there is in the limits of the diseño but little more than one league.

Question 100. What is the meaning of arroyo Seco?

Answer 100. It means Dry creek.

Question 101. Does the water run in the arroyo de los Capitancillos throughout the year, or is any portion of dry?

Answer 101. There is a strong stream running at all times at the head of the arroyo de los Capitancillos, at the junction of the arroyo de los Alamitos, and I think water runs the whole length of the arroyo de los Capitancillos the greater part of the year.

Question 102. Do you know the fact that that arroyo below, about station 8 or 9, as marked on map marked "No. 1, Exhibit A. P. C.," has been always known as the arroyo Seco de los Capitancillos?

Answer 102. I do not; but about that point the bed of the creek changes from rock to sand and gravel, and I presume the water entirely disappears at that point early in the summer; I have never followed down the arroyo in the summer season, and the lower part of it may be dry longer than indicated in the preceding answer.

Question 103. If that arroyo bore the name of arroyo de los Capitancillos at the time of the grant to Justo Larios, would it affect your judgment as to the location of the northern boundary of the land?

(The att'y for the U. S. objects to this interrogatory, because it diverts the witness's attention to a hypothetical state of facts; secondly, because it is irrelevant; and thirdly, because it attempts to change the calls of the grant by parole testimony.)

Answer 103. It would not, the western boundary in the title bearing the name of arroyo Seco, on the side of the establishment of Santa Clara, and there being another arroyo represented on the diseño, marked arroyo Seco, and on the same side, adjacent to it, "Lindero de S'ta Clara."

Question 104. In making the survey and location of the rancho de los Capitancillos, were you governed entirely by your own judg-

ment as to the proper location of its boundary lines, or had you any instructions to control you upon the subject either from Capt. Halleck or any other person?

Answer 104. I had no instructions in regard to running Berreyesa's dividing line, or the arroyo Seco, or the eastern and western boundaries of the rancho. I surveyed the line of the arroyo de los Capitancillos and the line 44 K 64, and found that the survey contained $811\frac{27}{100}$ acres less than a league. I was not instructed how or where to locate the last named lines. I surveyed these lines according to the grant and diseño. I reported the fact to Mr. Peachy that there was a deficiency in quantity of $811\frac{27}{100}$ acres, and that it might be taken either to the north or the south of the lines of the survey, or a part to the north and a part to the south; he instructed me to draw the line I J K, giving the additional quantity of land required to complete the league south of the line 44 K 64, as he said he wished to ascertain the furthest possible extension of the rancho in a southern direction.

Question 105. Then the only line which you located under instructions was the line "I J K," and the other lines were located according to your own judgment, as to the calls of the grant and diseño.

Answer 105. That is the case.

Question 106. When you made the survey, you took the arroyo de los Capitancillos as the proper northern boundary of the tract, according to the grant and diseño, did you not?

Answer 106. I did.

Examination adjourned until August 29th, 1856.

Deposition not signed, by consent.

Parties not present August 29th, 1856.

Examination adjourned until September 1st, 1856.

Examination resumed September 1st, 1856.

Questions by A. P. Crittenden, Esq., on behalf of the Claimant.

Question 107. In running the eastern line of the rancho of Justo Larios, why did you not run from the point O to station 65, instead of stopping at station 64.

Answer. I stopped at station 64 because I considered it a base of the Sierra, which is described by the title as being the southern boundary of the ranch of Justo Larios.

Question 108. What Sierra did you consider that point to be the base of?

Answer. The Sierra del Enciño.

Question 109. What reason had you for considering that to be the base of the Sierra del Enciño?

Answer. Station 64 is at the base of the first mountain south of the arroyo de los Capitancillos, on the diseño of Justo Larios. No mountains are represented between the arroyo de los Capitancillos

and the Sierra del Enciño; this is, then, one reason why the first mountain south of the arroyo de los Capitancillos should be the Sierra del Enciño. Another reason is, that a number of live oaks or encinos grow on the northern face of the mountain, and therefore the name could be appropriately applied. Also, because from the diseño of Justo Larios, the Sierra del Enciño could not have been intended to apply to the mountains beyond the arroyo Seco, above the great bend of that arroyo at station 130, or that bend would have been represented on the diseño, and the ridge which I have called the Sierra del Enciño would be represented as lying between this arroyo and the arroyo de los Capitancillos.

Examination adjourned until to-morrow, September 2d, 1856.

Not signed, by consent.

Examination resumed September 2d, 1856.

Questions by Att'y for Claimant.

Question 110. Have you any other reasons than those given in your last answer for considering the ridge in which the New Almaden, "San Antonio," and "Guadalupe" mines are situated as the Sierra del Enciño referred to in the diseño of Justo Larios?

Answer. None other occur to me at present.

Question 111. What is the meaning of the word Sierra?

Answer. The primitive meaning is a saw; as applied to geography, it means a mountain ridge with irregular or saw-like crest.

Question 112. Is the word "Sierra" used to designate every range of hills or mountains, or is it only applied in designating the great chains of mountains such as the Sierra Nevada?

Answer. I cannot what must be the length of a range of mountains to entitle it to the name of a Sierra; it is sometimes used to designate minor ranges and spurs from a larger mountain. I will adduce as an example the rancho of "El Rincon de la Cañada del Rio San Lorenzo de Santa Cruz," where it is applied to two spurs of the coast range which terminate near the town of Santa Cruz.

Question 113. How many sierras did you ever hear of in California, and what are their names?

Answer. I have heard of the "Sierra Nevada," the "Sierra de Santa Cruz," the "Sierra Azus," the "Sierra del Enciño." I do not remember the names of any others which I have seen in Mexican grants, although I have seen several frequently. Lands are described as bounded by the Sierra, without giving it its specific name. I think the word Sierra, in its true application, should extend only to chains of mountains, and that it should embrace the whole mass of mountains, but in California it is not always so applied.

Question 114. What other Spanish words are there in use in California besides the word Sierra to designate points elevated above the ordinary surface of the earth?

Answer. "Loma," "Cerro," "Lomita," "Cerrito."

Question 115. What is the meaning of the word "Lomas?"

Answer. It means hills, and is generally applied to low hills.

Question 116. Does not the word "Lomas" apply to all the hills lying at the foot of a chain of mountains, whether those hills are isolated or form a connected range?

Answer. It is applied to the hills generally suitable for grazing, near the base of the mountain ranges. These hills are generally spurs from the main range, and I do not know an instance where they extend for any great distance in a continuous range before they subside into the plains. The word "Lomas" would be properly applied to isolated hills near the base of a mountain range.

Question 117. Lomas may be either high or low hills, may they not?

Answer. I think the word "Lomas" is not applicable at all to high hills. I have never known it to be so applied.

Question 118. What are "Lomas Altas?"

Answer. The meaning of the two words is "high hills."

Question 119. You have stated that on this ridge, on which the "New Almaden," "San Antonio," and "Guadalupe" mines are situated there are live-oaks growing; are there many of them, and on what part of the ridge are they?

Answer. There are a considerable number of them found generally in groves on the northern slope of the ridge, and presenting a very beautiful green appearance; there a few on the southern slope.

Question 120. Are there not many live-oaks on the mountain back of this ridge, and also in the plain to the south of the ridge?

Answer. There are a considerable number on the mountain back of the ridge, a few on the nearly isolated low hills near the northern base of the mountain, but I think none on the plain.

Question 120. Then so far as the presence of live-oaks is, in your opinion, an indication of what is intend by Sierra del Enciño, the main range south of this ridge would answer the call of the diseño, would it not?

Answer. It would as far as the presence of live-oaks is concerned.

Question 121. What is the meaning of the word "Enciño?"

(120, question and answer, objected to, because it seeks to vary the calls of the grant.)

Answer. It means a live-oak.

Question 122. What is the meaning of the words "Sierra del Enciño?"

Answer. It means live-oak mountain range.

Question 123. What is the literal meaning of the words?

Answer. Mountain of the live-oak.

Question 124. What particular live-oak tree is there on this ridge distinguishable from all others, and from which this ridge

could take the name of "Live Oak?" I speak of the ridge in which the "New Almaden," "San Antonio," and "Guadalupe" mines are situated, and which is separated from the main chain by the upper portions of the streams designated on Exhibit A. P. C. as the arroyo Seco and arroyo de los Alametos.

Answer. There are several prominent live-oak trees on the summit of the ridge, but I cannot specify which one may have given the name to the ridge. The one on the Peak of Mine Hill is very prominent; so also are several others on the summit of the ridge to the westward of this point.

Question 125. Have you not examined a great many of the diseños upon which grants have been made in California?

Answer. I have.

Question 126. Are such diseños ordinarily accurate determinations of boundaries and objects such as a surveyor would make, or are they mere rough sketches, giving a general and indefinite description of land?

(Question 126 objected to.)

Answer. There are very few accurate surveys made under the Mexican government. Diseños were of course inaccurate and merely rough sketches of the land intended to be granted, or more properly of the land asked for by the petitioner, as the diseño was usually presented by him at the time he asked for the land.

Question 127. Do you know by whom these diseños were generally drawn—whether by a surveyor or by the applicant for the land?

Answer. I cannot know by whom they were drawn, as I did not come to California until 1849, but I know they generally accompanied the petition.

Question 128. From your examination of them, and from your attempts to locate land in reference to them, would you not say that ordinarily they exhibit great ignorance of the art of surveying and drawing?

Answer. I certainly would.

Question 129. Judging from your acquaintance with grants and diseños of California, would you not say that the mode in use here of describing land was exceedingly indefinite? Were not objects which would have served the purpose of description often omitted in diseños, and were not lines often attempted to be fixed by reference to points or isolated objects?

(Question objected to on the ground that it is irrelevant and leading.)

Answer. In many, probably the large majority of cases, the modes used here did not describe the land as definitely as required at this time. Objects which would have determined precisely the extent of the land were often omitted, and frequently an object at a single point on a line only was marked, and the direction of the

line had to be determined by the general course marked on the diseño, and the representation of the topographical features, such as streams and mountains at other points; in some cases the diseños are still more rude and indefinite.

Question 130. Does the diseño Justo Larios exhibit much skill in the art of delineating lands, or is it an exceedingly rough sketch, showing nothing but a few prominent lines and objects?

(Question objected to as leading.)

Answer. It is a rough sketch, but better located than a majority of California diseños; the courses of the arroyos and the positions of the mountains are pretty well delineated; the low and detached hills rising from the plain are not delineated, nor the arroyo Seco, which flows through Berreyesa ranch.

From the position of the eastern line, Linden del Señor Berreyesa, I think that at the time this diseño was made, Justo Larios designed to claim the land eastward of his present eastern boundary, so as to include the stream now known as the arroyo de los Alamitos from a point where it leaves the mountains, and some land to the eastward of that point.

Question 131. If by the "Sierra del Ensiño," designated on this diseño, had been intended not the main Sierra, but the detached ridge in which the "New Almaden," "San Antonio," and Guadalupe mines are situated, and which ridge is designated on the Exhibit A. P. C. by the letter "H" at the eastern end, and "Y" at the western, would it not have been delineated on the diseño as sweeping down more into the plain, and approaching more nearly the arroyo de los Capitancillos, as it appears in fact to, from your map?

Answer. An accurate representation would have shown the base of the ridge designated H Y on Exhibit A. P. C., as approaching nearer the arroyo Capitancillos, than is represented on the diseño of Justo Larios. It has already been explained that this ridge is not detached from the main mountain or Sierra, but is connected with it and forms part of it.

Question 132. On the diseño is not the arroyo de los Capitancillos, which corresponds to the arroyo de los Alimitos on Exhibit A. P. C., represented as heading in the Sierra del Enciño? Does not the Sierra del Enciño appear on the diseño as extending unbroken eastward of the arroyo de los Amitos, and how do you reconcile this with your supposition that the Sierra del Enciño is the ridge X Y?

Answer. The arroyo de los Capitancillos, corresponding with the arroyo de los Alimitos in Exhibit A. P. C., where it is shown on the diseño of Justo Larios, as leaving the Sierra, is represented as a stream of considerable width. Looking from the plain the stream cannot be seen beyond this point, being hid by the mountains, and was therefore not represented.

It will be seen that the mountains are shown in elevation, and not

in pain. The diseño may be said to be partly a map and partly a picture, and, like most of the California diseños, does not follow any correct system of drawing.

If the stream had been continued above the base of the Sierra, as the mountains are shown in elevation, it might indicate, under this system of drawing, that the stream fell perpendicularly from a point above the top of the mountain. By reference to Exhibit A. P. C., it will be seen that a mountain ridge corresponding with X Y, lies to the eastward of the Alametos, and is merely separated from the ridge X Y, by the stream called the Alimitos, which breaks through the ridge. I therefore see no evidence in the diseño that the arroyo de los Capitancillos rises in the Sierra del Enciño, but the diseño merely shows that its course within the Sierra is hid within the mountains.

Question 133. Do you consider this diseño so exact, that you can infer anything from the apparent width of the stream at any point, as it is laid down on diseño?

Answer. I could not certainly estimate the width of the stream from the diseño; but if it was intended to indicate the head of the stream, I think it would have represented it of less width at this point than it has lower down.

Question 134. You mean to say, do you not, that it would have done so if it were correctly drawn?

Answer. It would have done so undoubtedly if correctly drawn, and I think, judging from the diseños, that I have seen that the great probability is that it would have been so represented if intended to show the head of the stream.

Question 135. Then you think, do you, that there is a great probability that these diseños are correctly drawn, and delineate objects according to a scale?

Answer. I certainly do not.

Question 136. Then how can you say that if the intention had been to show that this was the head of the stream, the diseño would have actually shown it by the diminished width of the stream?

Answer. I think any child of ordinary intelligence would have so drawn it, although it knew nothing of the use of the scale; I mean a child of ten years of age.

Question 137. Do you not believe that the lines representing those streams on that diseño were drawn without any intention whatever to convey any idea of the width of those streams, but merely to designate roughly that there were streams there?

Answer. The primary intention was to represent the position of the streams; the double lines were undoubtedly placed there to show its width, as they could not have been placed for any other purpose. The probability is that the one who made them knew little or nothing about the use of a scale, and that therefore the rules of pro-

portion grossly violated. I cannot judge how far he cared to represent the width correctly.

Question 138. Is not the apparent width of the stream at every point out of proportion to the dimensions of the tract of land?

Answer. It is represented as many times its proper width.

Question 139. Allowing as a fact that by Sierra del Enciño was intended not the ridge X Y, but the main Sierra lying south of it, would it be at all singular that a rough sketch like this diseño should not show the course of the arroyo Seco and the arroyo de los Alametos above the bends where they leave the Sierra, especially when it is considered that the base of the Sierra was the southern boundary of the land, and it was unnecessary that those portions of those streams should be delineated in order to fix that boundary?

(Questions objected to.)

Answer. I think it would be very singular, as it would be impossible to fix the base of the Sierra, unless you call it along those streams for a portion of the distance, and a line crossing the ridge from one stream to the other for the remainder of the base of the Sierra. The representation of the upper part of the arroyos, and of a line crossing from one to the other, would have been the most obvious mode of representing it, and could not have been omitted in any diseño having any ordinary claims to accuracy.

Examination adjourned until to-morrow, Sept. 3d, 1856, at 10 o'clock a. m.

Deposition not signed, by consent.

Examination resumed Sept. 3d, 1856.

Wm. J. Lewis recalled. Cross-examination continued.

Questions by Att'y for Claimant.

Question 140. What part of the diseño of Justo Larios is it that you call a picture?

Answer. The representation of the mountains and hills which are shown in elevation, or *or* as projected on vertical plain, while the other parts of the map are represented as viewed from above, or as projected on a horizontal plain.

Question 141. As the mountain *as* projected on a vertical plain, and as on the diseño there is only a single range *is* represented, is it not reasonable to conclude that the range is intended to represent the main and loftiest chain, and not the ridge marked X Y on your map?

Answer. I think that the base of the Sierra del Enciño shown on the diseño represents the base of the ridge X Y, which is also a part of the base of the main range, the ridge X Y being merely a portion of the range. Whether the name Sierra del Enciño might not have been intended to apply to the whole cluster of mountains forming that part of Santa Cruz range, I can't tell, but

my opinion is otherwise. I think it is not reasonable from the data to conclude that the range marked on the diseño "Sierra del Enciño" is intended to represent the main and loftiest range, and not the ridge marked X Y on the map.

Question 142. Why can't you tell whether or not the name "Sierra del Enciño" was intented to apply to the whole cluster of mountains forming that part of Santa Cruz range?

Answer. Because I have no evidence to enable me to decide the question beyond what I have already given.

Question 143. You don't know, then, as a fact, where the "Sierra del Enciño" is, or what range it is, but only infer from the reasons you have given in your previous answers that it is the ridge marked X Y on the map?

Answer. I judge of the position of the Sierra del Enciño from facts already given. I infer from the diseño that the base of the ridge X Y is the base of Sierra del Enciño, and the strong probability is that the ridge X Y alone is that Sierra. I believe I have no knowledge on this point, except what I have given.

Question 144. In the representation on the diseño of the Sierra del Enciño, what do you consider that the upper broken line is intended to represent?

Answer. I think it is intended to represent the summit or crest of the ridge X Y.

Question 145. Then, is there anything upon the diseño to show the existence of the main range lying south of that ridge?

Answer. I think not.

Question 146. Do you not think that those lines drawn upon the diseño above the words "Sierra del Enciño" were intended as a rough representation of the appearance of the country south of the land, including the whole mass of mountains as viewed from the plain to the north; and if so, would not that upper line represent the profile of the main Sierra?

Answer. I think not; but if so, the upper line would undoubtedly represent the profile of the main Sierra or Santa Cruz range marked on Exhibit A. P. C. "Sierra Azul."

Question 147. Along the arroyo Seco, from station marked on your map 130, eastwardly up to station 98, and thence up to the head of the stream at the point marked O, is there not a deep valley or ravine completely separating the ridge X Y from the main Sierra?

Answer. Along the arroyo Seco, from station marked 130 to station 107, the stream passes through the hills which rise immediately from its banks; in some places the banks rise perpendicular, and others sloping; the stream has a rapid descent. At station 107 the line indicated leaves the main stream (which comes from the south) and follows up a steep, narrow gorge, rising very rapidly from 107 to O, and making an indentation or break in the

ridge at the point O; the ridges are entirely connected at 130; they are completely separated; at the intermediate points they are partially separated as indicated above. There is a continuous ravine from station 130 to O, through which the streams flow. I do not think it has sufficient width to be called a valley.

Question 148. What do you understand by the word valley?

Answer. A tract of level or nearly level land, bounded, at least, on two opposite sides by hills or mountains.

Question 149. Is there running water from the point O down to station 130?

Answer. In March, 1855, during the rainy season there was; the stream from O to 107 was very small, and is probably dry during the great part of the year. A strong stream comes in from the south at this point, and I have no doubt that there is always a good deal of running water from station 107 to 130. I found a vigorous stream at station 122, a few days since, *is* an unusually dry season.

(I object to so much of the answer of the witness as speaks of the probability of the stream being dry in the dry season. Def'dt's att'y, Crittenden.)

Question 150. Were you ever on this stream between the points O and 107 in the dry season, or when there was no *was no* running water there?

Answer. No.

Question 151. Does the water run below station 130; and if so, how far?

Answer. In December, 1854, there was water at station 39, but none at station 38 or below that point.

Question 152. What is about the difference of level between stations 24 and 130, and between stations 130 and 107, and between stations 107 and the head of the stream at the point O?

Answer. I cannot tell exactly; I think about 60 feet rise from station 24 to station 130; 150 ft. from station 130 to station 107, and 420 ft. from station 107 to O.

Question 153. Do you get these differences from having actually run a line of level; or if not, in what mode have you ascertained them?

Answer. I did not actually run a line of levels between these points. The depression marked (1,325 ft.) below the Peak to Mine Hill, was ascertained by observing the angle of elevation at that point to the Peak of Mine Hill, the elevation of which above tide was established. The height of the point at the junction of the arroyo Seco and the arroyo de los Alemitos was established in the same manner. The fall of the Capitancillos from the last named point to station 24 was estimated at 53 ft. The comparative fall of the stream from O to station 24 was divided according to my judgment of the fall of the different portions of the stream, and not

from any levels, and I wish my preceding answer to be considered as only a rough estimate of the fall of the streams.

Question 154. In your calculation how do you get the difference of level between the head of the stream at the point O and the point marked 1,325 ft.?

Answer. I took it from the topographical lines on the map.

Question 155. In what way do you get it from the topographical lines on the map, and what lines do you refer to?

Answer. I refer to the vertical lines between the point marked 1,325 to O, each shade or series of vertical lines being intended approximately to represent 100 ft.

Question 156. Are these series of lines drawn accurately enough to serve as a guide to determine from the map itself the difference of elevation between different points?

Answer. They will not do so accurately; they show the topography of the country, and were drawn on the principle stated; I found it difficult to have the system rigidly carried out.

Question 157. Was not this topography sketched, not from lines of levels run to determine accurately the configuration of the ground, but from a mere view of the country, and having regard to the known differences of elevation of a few points?

Answer. The topography was sketched in the manner indicated in the question, except the sketches were taken from a great number of points.

Question 158. Following the arroyo de lo Alemitos up through the hills to station 79, and thence to the head of the stream at the point marked P, you find a deep and well defined valley or ravine?

Answer. Following up the arroyo Alimitos, the stream runs through a deed ravine: this large ravine continues from 79 to 90, near which it heads. A small stream comes in from "P" in a direction nearly at right angles to the larger and deeper ravine. The stream makes a small ravine from P to *to* its mouth. Below 79 the Alamitos runs through a deep ravine.

Question 159. How far apart are the two streams which head at the points O and P, and what is the distance between those streams where they approach each other nearest?

Answer. They are nearest at their heads, points marked O and P, which are about 37 chains, or 814 yards apart.

Question 160. How did you ascertain that distance?

Answer. By measuring it on the map.

Question 161. Did you run a line along those streams; if not, how do you know that they are correctly laid down on the map?

Answer. I did not run a line along the stream which heads at "P," nor along the upper part of the stream that runs from O to station 98; but I did run a line from station 95 to point marked 1,325 ft. I also worked down the ravine from P to 79, and I am satisfied the representation on the map is about right.

Question 162. What is the elevation of the lowest point of the gap which has to be passed between the streams heading at O and P?

Answer. 1,325 feet above tide.

Question 163. Is there a distinctly marked ravine along your line from station 90 to station 95?

Answer. The ravine heads or runs out at a depression in the ridge at station 95, but at a very short distance below station 95, to station 90, there is a distinctly marked ravine.

Question 164. What is the elevation of the summit which you cross near station 95?

Answer. 1,349 ft.

Question 165. You run your line, did you not, from station 65, up the branch of the Alamitos, and thence crossed over to the arroyo Seco? Why did you not, when you reached station 79, run up the stream which heads at P?

Answer. Because the stream I ran up from station 79 to 90 was much larger than the stream coming in from P, and I followed the bottom of the ravine or gorge between the mountains.

Question 166. When you ran the line from 79 to 90, had you ever crossed the summit between P and O, or examined the upper portion of the arroyo Seco, from O to station 98?

Answer. I had not.

Question 167. If you had been running the line up the arroyo Seco, when you reached the point station 98, would you not have continued up the stream which heads at point O, and thence crossed over to the stream which heads at "P?"

Answer. I would.

Question 168. If one of these two lines had to form the part of the southern boundary of this tract—that is, the line which you have run from station 79 to station 98, or the lines from station 79 running up the stream which heads at "P," thence crossing over to the stream which heads at O, and thence down to station 98—with the knowledge which you now have of the country, and considering that the latter line is the most direct and passes over at the lower summit than the former, and that either of the two would give an excess in the quantity of the land, which would you take as the proper location of that part of the line?

Answer. If I was obliged to take either, I would, for the reasons mentioned, give the preference to the last-described line.

Question 169. About what quantity of land is included within the two lines described in the last preceding question?

Answer. About 300 acres.

Question 170. Please to describe the ridge X Y; is it uniform in height, or is it broken and irregular? If you know the height of any points upon the ridge, please state them, and mark them on Exhibit A. P. C.

Answer. The heights of the several points on the crest of the ridge, as determined by me, are now marked on Exhibit A. P. C., and expressed in feet. The highest point on the ridge is the point marked Peak of Mine Hill, and is 1,707 ft. Between that point and the hacienda, or eastwardly, the descent is very rapid. From the Peak of Mine Hill, going westwardly, the height of the ridge decreases rapidly until it falls about 100 ft. The crest then is tolerably uniform until it reaches the point marked 1,500 ft. It then has a series of summits, with depressions between them, but gradually decreasing in altitude until you come to a low point near the letter "E," in the word "San Antonio mine," then rises again, and there are a series of summits until you come to the point marked R. Immediately beyond, or to the westward of this, there is a low gap, near the Guadalupe mine. The crest of the ridge then rises, and the ridge finally terminates at station 130. The elevations marked on the map are the elevations above tide.

Question 171. What height would you have to ascend from the plain crossing this ridge at the lowest point?

Answer. I think about 550 feet, by crossing near the Guadalupe mine.

Question 172. What height would you have to ascend, crossing near San Antonio?

Answer. About 600 feet.

Question 173. Is the shape of this ridge on the north uniform, or is it abrupt in some places and in others a gradual descent to the plain?

Answer. The slope is very irregular; in some places very abrupt, in others more gradual. The high spurs jutting out from the main ridge add to the irregularity of the slopes.

Question 174. Can you ride on horseback over almost any part of this ridge?

Answer. There are a few points where you can ride over the ridge. There has been a road constructed from the hacienda to the mine, which you can ride up, and which wagons can go up. When you have attained the crest of the ridge, a short distance west of a peak, I think you could ride on horseback probably nearly the whole length of the range.

Question 175. What is the general character of the vegetation on this ridge?

Answer. On the lower part of the ridge, on the north side, there is grass in ordinary seasons; higher up, chiefly oak and dense thickets; on the summit a few oaks, and generally but little grass. The south slope of the ridge is very barren, and in many places generally very rocky. Some places the rocks extend to the summit of the ridge.

Question 176. Do you mean to say that the southern slope of that portion of the ridge which lies westward of the San Antonio mine is very rocky and barren?

Answer. I have said that generally the southern slope is very rocky and barren. There is a small part of it, near the San Antonio mine, that is an exception. The greater part of the land between the San Antonio and Guadalupe mine are of that description, and I cannot give the land in the vicinity of the Guadalupe mine a different character.

Question 177. Is not this ridge a good range for stock? Is not more valuable for grazing purposes than the plain which lies between it and the arroyo de los Capitancillos?

Answer. In a dry season, like the present, the northern slope is undoubtedly better for stock, or rather the little indentations between the bases of the spurs. The grass on the plain is now completely dried up. I think that, in ordinary seasons, stock would do well on the plains throughout the year, and of course it would be preferable to retain them there rather than to have them in less accessible positions.

(Mr. Peachy, on behalf of the U. S., objects to the question and answer, on the ground of its irrelevancy.)

Question 178. Are there not on this ridge innumerable cattle paths, showing that a great number of cattle have ranged there?

Question. I have not seen many, indeed very few, and they did not appear as if they had been much travelled.

Question 179. Is the space between the foot of this ridge X Y and the arroyo of Los Capitancillos a level plain, or is it broken, or does it descend towards the arroyo?

Answer. It is not a level plain, but has a gradual inclination towards the arroyo; there are several hills—some isolated, and others nearly so—rising from the plain; there are also several arroyos partially crossing the plain and then wasting themselves, and the ground is slightly rolling between them.

Question 180. What is about the average fall from the base of the ridge to the arroyo?

Answer. About 80 feet.

Question 181. What is the elevation of the point O at the Junction of the arroyo Seco and the arroyo de los Alamitos?

Answer. 253 feet.

Question 182. Do you know the elevation of any other points, except on the plain, besides those you have already designated, either on this tract of land or in this vicinity, or on the Sierra south of it? if yes, please state what points, and their elevation, and designate them on Exhibit A. P. C.

Answer. Those in the vicinity of the rancho not already described, are mount "Bache," 3,780 ft., mount "Chual," 3,530 ft., mount "Umunhum," 3,430 ft., point marked "Live Oak," 2,250 ft., "Priachi de Mishantuck," 1,790 ft., point on Pueblo hills, summit on continuation northward of eastern line of rancho, 800 ft. All these elevations are above tide; mounts Bache and Umun.

hum and Choal mts. are the highest peaks of the Santa Cruz mountains in view from the arroyo de los Capitancillos.

Examination adjourned until to-morrow, Sept. 4th, 1856.

Deposition not signed, by consent.

Examination resumed September 4th, 1856.

Questions by Att'y for Claimant.

Question 184 State, if you please, how you determine these elevations.

Answer. The basis was the summit of Mount Bache, on which there is a pole established by the United States coast survey, and the height was taken as ascertained by them the map was made of the whole tract, and the depressions of the various points ascertained by taking the vertical angles to Mt. Bache, from a large number of points, and from these obtaining in a similar manner the altitude of other points.

Question 183. At the point marked "Live Oak," 2,250 ft., is there any object which is remarkable, or which is visible from a great distance on the plain; if so, what is it?

Answer. There is a live-oak on the high spur at this point, which is not surrounded by other trees, and which is visible from a great distance.

Question 186. Describe the spur upon which that live-oak is situated.

Answer. It is a long high spur, projecting from the main range, west of the Umunhum, having a moderate slope in its upper part, but abrupt below; the upper portion is covered with timber, but in the vicinity of the live-oak the crest of the ridge is destitute of trees, with the exception of this one.

Question 187. Is not this live-oak tree, and the spur upon which it stands, visible from the town of San José and from the plains, many miles north and northwest of San José?

Answer. They are visible from some parts of San José, and from many points to the north and northwest of it; the spur can be seen from the vicinity of the mission of San José.

Question 188. Does not this spur project boldly from the mass of the Sierra, and present a clear outline to an observer in the direction of San José, and from the north and northwest of San José?

Answer. It does appear very distinct when viewed from the plain northwest of San José, at right angles to the course of the spur; viewed from San José it appears in the foreground, but in the back ground and rising above it is seen the peak of Umunhum.

Question 189. Is not the place where this tree stands, a place well known to the people of the country, and has it not a name well known to the old Californians; if yea, what name?

Answer. I have no recollection of having heard it spoken of by

any old Californians, nor have I heard a specific name given to it by the present residents.

Question 190. Have you never heard from persons who have resided long in the country, that from a period long prior to the application of Justo Larios for this land, place marked by this tree has borne the name of "El Enciño," and by that name has been well known to the people of the country, and that that portion of the main "Sierra" which is in the vicinity of this spur has been known by the name of Sierra del Enciño?

Answer. I never have.

Question 191. If you were to ask any of the old residents of that vicinity where El Encino was and where the Sierra del Encino was, what answer would they give?

Answer. Never having spoken to them on the subject, I do not know what they would say.

Question 192. By what name is this ridge, X Y, known amongst the old residents of the country?

Answer. I have heard it called Mine hill since I have known it, or since 1850. I have never heard any Spanish name for it, or known any, except what may be inferred from the diseño of Justo Larios and Berreyesa.

Question 193. Then you never heard it called "La Cuchilla," nor La Cuchilla de Almaden, nor La Cuchilla de la Mina, by the old Californians?

Answer. I have not, that I recollect.

Question 194. Did you never hear it spoken of as "Las Lomas," by the old residents of the country, as distinguishing it from the main Sierra?

Answer. I did not; and I should consider the term improper, as "Lomas" is only applied to low hills.

Question 195. If you were about locating the tract of land granted to Justo Larios, and were apprized of the fact that that portion of the main Sierra, in the vicinity of the spur on which this live-oak stands, was known at the time of the grant, and long prior thereto, by the name of Sierra del Encino, and that the ridge X Y never did bear that name, but was known to the people of the country by a different name, where would you locate the southern boundary of the tract?

(Question objected to by Mr. Peachy, on behalf of the U. S., because it asks the witness's opinion on a supposed state of facts, and endeavors to locate the land contrary to the calls of the grant and diseño, and further, contrary to the names and natural objects as given in the diseño.)

Answer. I would make it along arroyo Seco, above station 130, and following that arroyo for some distance; but it is difficult to make a survey conformable to the calls of the grant, without making a line not called for by the grant and not shown in the diseño, run-

ning from some point on Berreyesa boundary to some point on this arroyo. I do not see that you could have any line following the base of the Sierra del Encino, on the supposition that the Sierra del Encino is that portion of the Sierra in the vicinity of the spur on which the live-oak marked 2250 is situated, until you strike Berreyesa's western line, if you refuse to consider the Mine ridge as part of that Sierra.

Question 196. In the case put, would you not at least continue up the arroyo as far as station 101, which, from your map, appears to be at the very foot of the spur on which the live-oak stands?

Answer. I would, were it not that the line from station 101 to station 64, at the northern base of the Mine ridge, would give a content of more than one league, and station 64 is the most northern point which we can assume for the southern base of the Sierra.

Question 197. Independent of the consideration of quantity, but locating the southern line according to the calls of the grant and diseño, and upon the hypothesis above stated as to the names of the ridge X Y and of the Sierra, would you not run the line from the station 130, up the arroyo, to the point O, thence across to point P, and thence down the arroyo de los Alamitos to station 65, at which station the eastern line would strike the Sierra?

(Question objected to by Mr. Peachy on behalf of the U. S., as it is asking the witness's opinion upon a supposed state of facts not laid down in the grant or called for in the diseño.)

Answer. In order to justify that location, I must consider that the name Sierra del Encino applies not only to the spur on which the live-oak marked 2250 is situated, but to the long ridge running from Mount Umunhum, a depression of which is crossed between O and P, and also to the ridge east of the arroyo de los Alamitos, from station 73 to 65, which ridge is a spur of Mount Choual; that the ridge X Y is no part of this Sierra; that the line described runs from station 130 to station 65, along the base of the Sierra, and not, as it does in fact, through narrow gorges, with mountains on each side. Also, I must suppose that the representation on the diseño of Justo Larios, of the streams and of the country lying to the north of the southern boundary, is grossly incorrect. Admitting all these suppositions, and disregarding the consideration of quantity, I would locate the southern boundary as indicated in the question.

(Answer objected to by Mr. Crittenden, on behalf of defendant, on the ground that it is not at all responsive to the question.)

Question 198. If the ridge X Y has, and had at the time of the grant Justo Larios, a distinct name of its own, and was not considered nor intended in the grant and diseño as the Sierra del Encino, or any part of the Sierra, how far would the eastern line of the tract of land extend; starting at point O, where would be its termination?

Answer. Its terminus would be at the base of Sierra del Encino and at station 65, if that name belongs to the main ridge south of this station.

Question 199. Does the grant say that the eastern line shall extend southward to the Sierra del Encino, or only to the Sierra?

Answer. It says to the Sierra.

Examination adjourned until to-morrow, Sept. 5th, 1856.

Deposition not signed, by consent.

Examination resumed September 5th, 1856.

Questions by Def'ts Att'y.

Question 200. Upon the supposition contained in question 198, can there be any doubt that at station 65 is the point where the eastern line will strike the Sierra and the point intended by the grant as the southern terminus of that line?

Answer. I should think not.

Question 201. Assuming, further, that the spur *on which the spur* on which the live-oak stands was a place well known and commonly designated as "El Encino," and considering that it is very common, as you have said in California titles, for a whole boundary line to be fixed by a single object, and taking the point 65 as a southern terminus of the eastern boundary line, how would you locate the southern line of the tract?

Answer. On the assumptions contained in the preceding questions from 198 to 201, I would, independent of the consideration of quantity, run the southern boundary line from station 130 up the arroyo to point O, thence to P, thence to station 79, and thence along the arroyo de los Alamitos to station 65.

(Questions from 197 to 201 objected to by Mr. Peachy, on behalf of the U. S., on the ground that they are asking the witness his opinion upon a supposed state of facts not laid down in the grant or called for by the diseño.)

Question 202. How can the question of quantity enter at all into consideration in locating the southern line, the position of which is fixed, or some points of it, when in your answer to interrogatory 70 you say that there can be no excess, insomuch as there is no northern boundary named in the grant?

Answer. There can be no excess because no northern boundary is named, and because the land between the base of the Sierra and the arroyo de los Capitancillos includes less than one league. I stated, also, that if more land had been included, the diseño would have conflicted with the grant, but such was not the case. The suppositions contained in the questions from 198 to 201, are, as I think, inconsistent with facts on these suppositions; for the reasons above given the diseño would have conflicted with the grant.

Question 203. Do you know any place, mountain, or ridge in

this vicinity which is called and known by the people of the country as the Sierra del Encino?

Answer. I do not.

Question 204. Did you ever make any inquiry of the old residents of the country for the "Sierra del Encino," or for "El Encino?"

Answer. I do not recollect that I ever did.

Question 205. Is it not a somewhat *an* unusual course for a surveyor to undertake to locate the lines of a tract where the grant calls for natural objects, bearing a definite name, without making any inquiry whatever as to the names of objects, of those persons who would be most likely to know their names, especially if the surveyor himself did not know and had never heard of the objects called for by the grant?

Answer. It would certainly be an unusual course for a surveyor on the supposition named, but in this case I knew well the names of the objects designated in the grant, except the specific name of this Sierra, and I thought and still think that the Sierra indicated on the diseño is the one lying next to the arroyo de los Capitancillos, and cannot, consistently with the position of other objects delineated, represent any other.

(Objection made to so much of the answer as gives the thoughts or opinions of the witness, by Mr. Crittenden, on behalf of defendants.)

Question 206. Can you ascertain by reasoning the name which a natural object bears, or are such names arbitrary and to be ascertained as facts?

Answer. I must have facts on which to base my process of reasoning. If I have a map before me on which objects known to me are drawn, and marked with names that I know they bear, and I see also a natural object marked on the map with a specific name and bearing a certain relative position to the known objects, and if I see a natural object actually occupying this position on the ground, I have a right, from these facts, to conclude that this natural object bears the specific name marked on the map, or at least the person who made the map thought so; the evidence in regard to the latter point is stronger than if I had obtained the information from any other person, except the one who made the map.

Question 207. Does not the call for the Sierra del Encino absolutely require the southern line to run at the foot of the range which bears that name; and if the range X Y did not bear that name, but the main range south of it did, would not the southern line have to be located on the ground at the foot of that main range, and could the location of it be at all *effected* by the omission in the rough draught or diseño of any representation of the ridge X Y?

(Question objected to, on the ground that it asks the witness his opinion on a state of facts not laid down in the grant or called for in the diseño, by Mr. Peachy, on behalf of the U. S.; and for the further reason that it asks the witness in regard to a location altogether independent of the intention of the grantee appearing from the diseño, and the other paper connected with the grant.)

Answer. The call for the Sierra del Encino requires a southern line to run at the foot of the range which bears that name, and, on the supposition made, the southern line would have to be located on the ground at the foot of the main range, if it could be done at all, and comply with the other conditions of the grant, and conform to the diseño. The location would not be *effected* by the omission in the rough draught or diseño of the ridge X Y.

Examination adjourned until Monday next, September 8th, 1856.

Deposition not signed, by consent.

Parties not present. Examination again adjourned until to-morrow, Sept. 9th, 1856.

Examination resumed September 9th, 1856.

Questions by A. P. Crittenden, Esq., Att'y for Claimant.

Question 208. Does not the call for the Sierra at the southern terminus of the eastern line require that that line, starting from point O, should run on to the foot of the main range at station 65, notwithstanding the ridge X Y, which it would have to cross on the ground, should not be delineated on the map, provided that ridge was not known as the Sierra, but had a name of its own, distinguishing it from the Sierra?

Answer 208. It does, subject to the proviso in question.

Question 209. How can you say that the suppositions made in the questions from 198 to 201 are inconsistent with facts when you admit that you do not know as a fact what mountain, or portions of a mountain, was called Sierra del Encino, but only infer it from the location of other *other* known objects on the diseño?

Answer 209. In question 198 it is supposed that the ridge X Y was not intended in the grant and diseño as the Sierra del Encino, or any part of the Sierra. The diseño has a ridge represented and marked Sierra del Encino, which corresponds to the position which the ridge X Y occupies on the ground; the supposition conflicts with the diseño on this subject. The ridge X Y is, I think, a part of, and is certainly connected with, the high Sierra south of it, and the supposition in the question is, I think, in this respect inconsistent with facts.

Question 210. If there was no mountain or hill in this vicinity known as the Sierra del Encino, but there was a spur of the main Sierra which bore the name of El Encino, and was well known amongst the people of the country, would you not understand the call for the Sierra del Encino to be a call for that Sierra of which El Encino

was part; especially would you not so understand it when you consider that the call in the grant is for the eastern line to terminate not at the Sierra del Encino, but at the Sierra?

(Question objected to by Mr. Peachy, on behalf of the U. S., on the ground that it asks the witness his opinion regarding facts not laid down in the diseño or called for in the grant.)

Answer 210. The words Sierra de Encino are found in the diseño, and not in the grant; I therefore looked to the diseño to see what Sierra is meant. If, in making the diseño, its author applied the name Sierra del Encino to a ridge which did not bear that name, or was not generally known among the people as such, the false application of the name does not change the intention of the framer of the diseño, which can be best gathered from the diseño itself, and which indicate the ridge X Y as the one designated. The call in the grant for the termination of the eastern line confirms this view, as it appears to me very improbable that a point like station 65 on the arroyo de los Alamitos, surrounded by mountains, should have been considered as the base of the Sierra. Had the grant said that the eastern line should be extended to the arroyo de los Alamitos, the matter would be clear; and had such been their intention, it is very improbable that it would have been described in any other manner. If we consider the spur indicated as the Sierra del Encino, we shall have these and other difficulties, as explained in my former answers, in locating the grant. I think these difficulties are insuperable.

(Answer objected to as not responsive to the question, by Mr. Crittenden, on behalf of the defendant.)

(Question 210 repeated.)

Answer 211. The conditions of the question, that there was no mountain or hill in this vicinity known as the Sierra del Encino, is in direct opposition to the words of the diseño, which indicate that there is a Sierra del Encino in that place. If there was none, it is clear that the author of the diseño thought there was, and I would follow the intentions of the diseño; I would not understand the call for the Sierra del Encino to be a call for that Sierra of which the place "El Encino" was part, if that Sierra was not in, or in the vicinity of the locality in which the Sierra del Encino is represented on the diseño.

(Answer objected to as not responsive to the question, by Mr. Crittenden, attorney for defendant.)

Answer to question 211 continued:

But if there was no mountain or hill in the vicinity known as the Sierra del Encino, but there was in this vicinity a spur of the main Sierra which bore the name of El Encino, and was well known among the people of the country, I would understand the call for the Sierra del Encino to be a call for that Sierra of which the place El Encino is a part.

Question 212. You say you never heard a Spanish name given to the ridge X Y. Did you never yourself give to that ridge a Spanish name? If you did, what name was it, and how came you to designate it by that name?

Answer 212. I never gave the ridge a Spanish name, but in this deposition I have stated why I thought that ridge was the "Sierra del Encino" indicated in the Justo Larios diseño.

Question 213. Did you never designate it as the Sierra de los Encinos or the Sierra de Encinos upon a map made by you, and which is filed with your deposition in case No. 363, The United States v. J. B. Berreyesa et. al., which is pending in this court?

Answer 213. By referring to my deposition in case No. 363, I find that in the map referred to, and also in the deposition, it is mentioned as the Sierra de Encinos. I wish my answer to question 212 to be considered as cancelled. I had forgotten the circumstances.

The name on that map was undoubtedly ascribed to it from the fact of the Sierra del Encino being marked on Justo Larios' map, and was so marked by mistake, probably being done from memory.

Question 214. Throughout your depositions in the case 363, you speak of this ridge X Y as the Sierra de Encinos. How came you to give that name to it, when, as you have stated in your present deposition, you had never heard it called by any Spanish name?

Answer 214. For the reasons stated in my preceding answer, I thought the name of Sierra del Encino was truly applicable, and the name Sierra de Encino was written by mistake. Probably the substitution was caused by putting it down from memory instead of referring to the diseño of Justo Larios, as I should have done.

Question 215. Why do you say that the name Sierra del Encino, which in English is "mountains of the live-oak," was applicable to this ridge?

Answer 215. This ridge has live-oak on it, and therefore the name might be applied to it on that account. The diseño of Justo Larios shows, I think, that it was applied to it; in my opinion, it is therefore applicable, and has been applied by the author of the diseño of Justo Larios.

Question 216. What is the meaning of "Sierra de Encinos?"

Answer 216. The words mean "mountain range of oaks;" but to make good Spanish the expression should have been "Sierra de los Encinos," or "mountain of the live-oaks."

Question 217. As you have represented on the map referred to in your deposition in number 363, a number of live-oaks on the ridge, is it not likely that you designated the ridge X Y as the Sierra de Encinos, because those trees were there?

Answer 217. My memory, and also a reference to the answers contained in the deposition referred to, satisfy me that the name was given principally in consequence of the ridge, in my opinion,

being designated Sierra del Encino in the diseño of Justo Larios; but the knowledge of the fact that there were a number of live-oaks on the mountain, may have betrayed me into the use of the plural form of the noun.

Question 218. Is the tree which is marked on Exh. A. P. C. "live-oak, 2,250 ft.," visible from the plain along the banks of the arroyo de los Capitancillos on this tract of land?

Answer 218. I cannot as to any point on the banks of the arroyo, but it is from many points on the road represented on the map as running nearly parallel to, and nearly south of the arroyo.

Question 219. When did you make the survey of the Justo Larios tract from which this map Exh. A. P. C. is drawn?

Answer 219. The surveys were made in December, 1854, January and March, 1855, for the portions embraced in the Justo Larios tract.

Question 220. You have stated that before commencing this survey you had examined the expediente of Justo Larios. Please state whether in that examination you observed the marginal decree of the 10th of June, 1842, a copy of which appears at page 12 in the transcript of this case. If yes, did that decree lead you to examine any other, and what papers?

Answer 220. My examination was confined to a search for the title and diseño. I do not recollect the contents of any other papers.

Question 221. Did not that decree lead you to examine the settlement of boundaries therein referred to, as calculated to throw light on the location of the boundary line of Justo Larios and Berreyesa?

Answer 221. I have no recollection of the contents of said decree.

Question 222. Have you ever examined, and had you examined prior to making this survey, expediente and grant of José Reyes Berreyesa of the place called Cañada de los Capitancillos?

Answer 222. I examined, a considerable time prior to making this survey, the grant and diseño of José Reyes Berreyesa, for the place called Cañada de los Capitancillos; I do not think I have ever examined the whole expediente.

Question 223. When you made this survey, then, you had no copy the expediente of Berreyesa with you, and no copy of the diseño.

Answer 223. I had no copy of the expediente with me, but a short time before going on the survey I examined a certified copy of the diseño in this city.

Question 224. Please examine the paper now shown to you, marked Exhibit N, and say whether or not the diseño which appears at page 10 is a copy of the same diseño of Berreyesa, to which you refer in your last answer.

(The attorney for the claimant offers as evidence the whole of document marked "Exh. N," together with a translation thereof, marked "Exh'bt O," which last, it is agreed between the attorney of the claimant and Mr. Peachy, on behalf of the U. S., is a correct translation of Exhibit N. Mr. Peachy, on behalf of the U. S., objects to the introduction of Exhibit N.)

Answer 224. It is.

Examination adjourned until to-morrow, September 10th, 1856.

Deposition not signed, by consent.

Examination resumed this 10th day of Sept., 1856.

Questions by Att'y for Claimant.

Question 225. What ridge is this which is marked on the diseño of Berreyesa "Lomas Bajas," and which is crossed by the dotted line marked "lindero?" What is there on your map Exh. A. P. C. which corresponds to that ridge?

Answer 225. The ridge marked "Lomas Bajas" is intended to represent the one on which the mine of New Almaden is situated, and is indicated on my map, Exh. A. P. C., by the letters X Y.

Question 226. What is this hill, or place, designated on the diseño Berreyesa as "Lomita," and to what does it correspond on your map?

Answer 226. It is a low hill situated near the middle of the valley of Capitancillos, and corresponds to the hills marked loma on my map, at the foot of which the eastern line of Justo Larios is drawn.

Question 227. To what point on your map does the point of junction of the two creeks marked on the diseño Berreyesa as the arroyo Seco, and the arroyo de los Alamitos, correspond?

Answer 227. To the point O.

Question 228. What is this dotted line which appears on this diseño of Berreyesa, and is marked "Lindero," and what line on your map corresponds to it?

Answer 228. It is the western boundary of the ranch Berreyesa that corresponds with the line from O to station 65 on the Alamitos creek.

Question 229. What point on your map corresponds with the southern terminus of the line lindero, as it appears on the diseño Berreyesa?

Answer 229. Point on the south side of the creek, near station 65.

Question 230. It appears, does it not, from the diseño Berreyesa, that the ridge which you have marked on your map "X Y" was called "Lomas Bajas," was considered no part of the Sierra, and delineated as a distinct range of hills?

Answer 230. It is plain that the ridge which I have marked X Y, is on the diseño of Berreyesa marked "Lomas Bajas," is con-

sidered no part of the Sierra Azul, and is delineated as a distinct range of hills; that they are not lomas Bajas, or low hills, and that there is not a valley separating them from the Sierra Azul, is shown in my map, Exh. A. P. C.

Question 231. Are they not low hills, or might they not be so called, in comparison with the loftier range south of them?

Answer 231. The range south of them is a range of very high mountains, rising at one point 3,780 ft. above the tide. It would be improper to speak of them as hills at all, and I think it as improper to apply the words "Lomas Bajas," or low hills, to the ridge X Y. The reason suggested in the question was probably the one why they were so named in the diseño of Berreyesa.

Question 232. As affecting the location of this western line of Berreyesa, and the question as to how far that line is to run southward from the junction of the two creeks, *if* it at all material whether the appellation of low hills (Lomas Bajas) was correctly or incorrectly applied to the ridge "X Y?"

(Objected to by Mr. Peachy, on behalf of the U. S., on the ground that it is irrelevant.)

Answer 232. I think not.

Question 233. If this ridge was in fact designated on the diseño as lomas Bajos, and thus distinguished from the Sierra, and is delineated on the diseño as a separate range, and that eastern line is marked on the diseño as crossing this ridge and the arroyo de los Alamitos, and extending to the Sierra, and the call of the grants to both Larios and Berreyesa is for this line to run to the Sierra, does it not show conclusively the intentions of the grantor that this line should terminate at the range marked Sierra, and could you, in locating this line, undertake to disregard that intention merely because you thought the name lomas Bajas, which was in fact given to the ridge X Y, was inapplicable, and that this ridge ought to have been called "la Siera," though it was not?

Answer 233. In the determination of the southern terminus of the western line of Berreyesa, I am governed by his title and diseño, the latter of which requires that this line should run from station O, across the ridge X Y, and the arroyo Alamitos, and go to the Sierra Azul, beyond that arroyo. In the location of the southern terminus of the eastern line of Justo Larios I am governed by his diseño, which does not represent his line as either crossing this ridge or the Alamitos creek, but stopping at the base of the first ridge south of the arroyo de los Capitancillos, and called on the diseño Sierra del Enciño.

Further, the call of the grant of Justo Larios requires that the eastern boundary should be the land of Berreyesa, which has for its western boundary the line described in Berreyesa's title, but does not require that the rancho should extend southwardly to *to* the terminus of Berreyesa's line.

Question 234. What points on the diseño of Berreyesa correspond with the points which are marked on your map "I" and station 64?

Answer 234. The point 64 will be near where the dotted line crosses the line under which is written "lomas bajas;" the point I will be on the dotted line a little above it.

Question 235. In your answer to question 233, you say that in determining the southern terminus of the western line of Berreyesa you are governed by his title and diseño, and in the location of the southern terminus of the eastern line of Justo Larios you are governed by his diseño. In the latter case, as in the former, why are you not also governed by the title as well as the diseño; and in determining the southern terminus of either of these lines, why do you not refer to both titles and both diseños, as this line was the division line between the two tracts of land agreed upon by the parties, and the agreement assented to and acted upon by the government; and especially, in determining the east rn line of Justo Larios ought you not to refer to the espediente of Berreyesa, which contains the evidence of the agreement of the parties, and the action of the gov't thereon?

Answer 235. In determining the southern terminus of the eastern line of Justo Larios, I was governed by his title as well as his diseño. I see nothing in the espediente of Berreyesa which is sufficient in my opinion to justify the extension of Justo Larios' line beyond the Alamitos. I should think the title and diseño of Justo Larios should determine the southern terminus of his eastern line; ⋈ is sufficient for that purpose. I do not see that the title of Berreyesa has anything to do with the question.

The settlement of the boundary between them was evidently to determine how far eastwardly and westwardly the claims of Justo Larios and Berreyesa should extend. If one property bounds on another, it does not follow that the former has the same extent as the latter, any more than that a property bounding on a street must necessarily bound on it for the whole length of the street.

Question 236. Was the grant to Justo Larios made by reference to the diseños presented him alone, or, in order to determine his eastern boundary, must you look also to the espediente and diseño of Berreyesa?

Answer 236. I think the grant of Justo Larios was made in reference to the diseño presented by him; but the eastern boundary was settled differently from what it is represented on Justo Larios' diseño, and in a definite manner, very definitely described in the title.

The title to Justo Larios does not refer to Berreyesa's diseño, but it does to his own diseño. I see no necessity of referring to the diseño and espediente of Berreyesa in order to determine this line.

Question 237. Is the dividing line to Justo Larios and Berreyesa designated at all on the diseño of Justo Larios?

Answer 237. It is not. I speak of the dividing line by agreement, as described in their title.

Question 238. Is it not manifest, from the proceedings of the two expedientes, that this dividing line was agreed upon after the espediente of Justo Larios was drawn and presented to the governor?

Answer 238. I think it is.

Question 239. Is not this dividing line distinctly marked on the diseño of Berreyesa, and in exact conformity to the agreement between Larios and Berreyesa, as the same is expressed in the report of José Z. Fernandez, which appears in the expediente of Berreyesa, and is dated Monterey, 16th of June, 1842?

Answer 239. I answer in the affirmative to the above questions.

Question 240. Is it not manifest, from the proceedings in these two espedientes, that both these grants were issued after the agreements between Berreyesa and Larios as to the boundary between them, and in accordance with that agreement?

(Mr. Peachy, on behalf of the U. S., objects to the above question, on the ground that the time at which the titles were issued cannot be proved by parole testimony.)

Answer 240. I think so.

Question 241. What is the eastern boundary of Justo Larios, as expressed in the grant to him?

Answer 241. The eastern boundary is the rancho of citizen José R. Berreyesa, which has for its boundary a line running from the junction of the arroyo Seco and the arroyo de los Alamitos, southward to the Sierra, passing by the eastern base of the small hill situated in the middle of the Cañada.

Question 242. What is the western boundary of Berreyesa, as it is expressed in the grant to him?

Answer 242. The western boundary is the rancho of citizen Justo Larios, which has for its boundary a line running from the junction of the arroyo Seco and arroyo de los Alamitos, southward to the Sierra, passing by the eastern base of the small hills situated in the centre of the Cañada.

Question 243. What is an eastern or a western boundary?

Answer 243. It is the line which bounds or limits the extent of the tract on the eastern or western side.

Examination adjourned until to-morrow, Sept. 11th, 1856.

Deposition not signed, by consent.

Examination resumed September 11th, 1856.

Questions by Att'y for Claimant.

Question 244. As the grant to Justo Larios declares that his eastern boundary is the western boundary of Berreyesa, and describes that line by fixing its position and length, and as the grant to Berreyesa declares his western boundary to be the eastern bound-

ary of Justo Larios, and determines that line in precisely the same manner and with the very same words of description, how can you make any difference between the eastern line of Larios and the western line of Berreyesa, either in position or length?

(Question objected to, on the ground that it presents to the witness a state of facts that are contradicted by the grants and diseños referred to, and interrogate him on the state of facts as presented by the question by Mr. Peachy, on behalf of the U. S.)

Answer 244. The corresponding descriptions seem to refer to precisely the same line, both as regards to position and length, but the reference to the two diseños shows that the southern termini of the ranchos are different.

Question 245. Does not the grant to Berreyesa declare that the eastern line of Justo Larios extends from the junction of the two creeks at the point marked on your map O, to the point marked on your map Station 65; I mean, taking also into consideration the diseño of Berreyesa?

Answer 245. I think it does.

Question 246. Do I understand you rightly, then, to say that, notwithstanding this clear requirement of the grant and diseño of Berreyesa, that the eastern line of Justo Larios does extend from the junction of the creeks to Sierra at the point marked 65 on your map; and notwithstanding the call in the grant of Justo Larios of the southern terminus of that line, and notwithstanding it is apparent from the diseño of Berreyesa, as you have yourself testified, that the ridge marked X Y on your map was called Lomas Bajas, *is* designated, and not as the Sierra, and is delineated as a distinct range, forming no part of the Sierra, yet you would not extend that eastern line, but would terminate it at the point marked Station 64, for no other reason than you are of the opinion that by the range designated Sierra del Encino, was intended not the main Sierra, but the ridge X Y; at the same time admitting, as you have done, that you do not know any range or hills in that vicinity called Sierra del Encino, or any part of any ridge called El Encino, and never inquired for it from the people of the country, and never heard the ridge X Y called by that name or by any other Spanish name?

Answer 246. I say that I would not extend the eastern line, notwithstanding the objections urged in the question. I would terminate it at or near station 64, because I believe the diseño of Justo Larios plainly indicates that the northern base of the ridge X Y corresponds to the northern base of the ridge marked on his diseño Sierra del Encino, and that no other construction can be adopted without representing a tract very different from that indicated in the diseño, embracing a much larger tract of land than was granted, and which, had it been intended should have been embraced in the grant, would have been differently described.

Question 247. How is it that you will so constantly recur to the

question of quantity, as having anything to do with the case, when you have yourself said that the eastern, western and southern lines were fixed, but the northern line is not?

Answer 247. The northern line is not fixed, but the diseño shows that the tract must extend as far north as the arroyo de los Capitancillos, and between that arroyo and the line which has been proposed south of Mine ridge there is included much more than one league of land.

Question 248. Why must it extend as far north as the arroyo Capitancillos?

Answer 248. The point O, as indicated by the grant and diseño, and also the arroyo Seco, which terminates at station 24, and the northern part of this arroyo and the whole of the arroyo de los Capitancillos, are marked in the diseño, and I therefore think the grant must extend as far north as the arroyo de los Capitancillos.

Question 249. Is the arroyo Capitancillos a because it is marked on the diseño, though it is not designated as a boundary nor called for in the grant?

Answer 249. It is not.

Question 250. Is the whole length of the arroyo Seco necessarily a boundary because it is delineated on the map, and the arroyo Seco is called for by the grant as the western boundary?

Answer 250. The fact of the arroyo Seco being delineated on the map is not of itself evidence that it must be followed for its whole length, in case there is an excess in quantity; where there is none it must be followed.

(The above last question and answer objected to by Mr. Peachy, on the ground that it asks the witness his opinion.)

Question 251. If, by the lines you have run as the boundaries of the tract, you had found ten thousand acres of land to be included, off which end of the tract or how would you cut off the surplus?

(Question objected to by Mr. Peachy, on behalf of the U. S., on the ground that it is idefinite and irrelevant.)

Answer 251. I do not know how it should be done; under the Spanish regulation, the position of the house of the ranchero had much to do with the location of the grant.

Question 252. In the location of the southern line how could the question of quantity be material in your opinion, if you think that the grantee could select his quantity, subject only to the condition of including his improvements?

Answer 252. It is only material as corroborative evidence that the location is consistent with the intention of the grant, when the land embraced in that location corresponds with the quantity of land granted, or nearly so.

Question 253. Have you generally found that correspondence in locating other grants?

Answer 253. There is frequently a variation from the quantity

called for; there is sometimes more and sometimes less than the quantity called for in the grant.

Question 254. Please now to answer question No. 233, which has been put to you but not been answered.

Answer 254. I think that the circumstances, as far as they go, indicate that the intention of the grant was to make the eastern boundary of Justo Larios and the western boundary of Berreyesa identical; and were this the only evidence, and could we be permitted to entirely exclude Justo Larios' diseño, the southern terminus of his eastern boundary would be south of the crossing of Alamitos creek. I must disregard either Justo Larios' diseño or that of Berreyesa, and in the location of Justo Larios' rancho and of the southern termination of his eastern boundary, I feel bound to give the preference to his diseño, which is made a part of the title.

Question 255. Suppose, in fact, the main Sierra, and not the ridge X Y, was intended by the range designated on the diseño Justo Larios as the Sierra del Enciño, where would be the necessity of disregarding that diseño, and what conflict would there be between that diseño and the grant of the diseño of Berreyesa?

Answer 255. On the supposition that the main Sierra was intended by range designated by the diseño of Justo Larios as the Sierra del Enciño, and that the ridge X Y was supposed to be no part of it, the diseño of Justo Larios would be grossly incorrect; it would result that the lines I have frequently spoken of, from station 65 to station 130, would represent the southern base as intended to have been indicated on the diseño; that the representation on the diseño was so incorrect as to show this line as running at the base of a ridge rising from the plains, with no mountains to the north of it; that the ridge X Y, five miles and three-quarters in length, and rising at one point to an altitude of 1,707 ft. above the sea, was a natural object too unimportant to be noted; that the bends of the arroyo Alamitos and the arroyo Seco, southwardly of the northern base of the ridge X Y, were not represented, and also that the tributaries of these streams and the spur crossed at O P, along which the southern line on this supposition would run, were not indicated on the diseño. I think that this is, in fact, to entirely disregard the diseño of Justo Larios in fixing the termination of his eastern boundary south of the ridge X Y. An inspection of the diseños of Justo Larios and Berreyesa shows clearly that the southern termination of the eastern line of Justo Larios' rancho, on his diseño, does not correspond with the southern termination of Berreyesa's western line, although the similar wording in the two grants would seem to indicate that these points are identical.

Examination adjourned until to-morrow, Sept. 12th, 1856.

Deposition not signed, by consent.

Examination resumed this 12th day of September, 1856.

Questions by A. P. Crittenden, Esq., Att'y for Claimant.

Question 256. What you have said in your last answer is no response to the question. I did not ask you to give reasons why, in your opinion, the diseño would be incorrect on the suppositions contained in the question, but I assumed that the diseño was imperfect in not representing at all the ridge marked on your map X Y, and on that supposition I wish you now to answer the question.

Answer 256. For the reasons contained in my last answer I say, that the suppositions mentioned in the two preceding questions involve the necessity of disregarding the diseño of Justo Larios, so far as relates to the location of his southern boundary.

(Question and answer objected to by Mr. Peachy on behalf of the U. S.)

(Answer objected to by Mr. Crittenden, att'y for claimant, on the ground that it is no answer to the question.)

Answer 256 (continued). On the supposition that the southern boundary is the main Sierra, and not the ridge X Y, and supposing the diseño of Justo Larios was so imperfect as not to represent at all the ridge marked X Y, there would be no necessity to disregard the diseño as far as relates to the general boundaries of the tract, which would be still the Sierra del Enciño, the arroyo Seco, and Berreyesa's line, and on the north as represented. If the diseño was so imperfect as to exclude the ridge X Y, the other imperfections in the diseño (which are noted in preceding answers) must be considered minor ones, such as would be as likely to occur. On these suppositions there would be no discrepancy between the grant of Justo Larios and the grant and diseño of Berreyesa.

Question 257. From the fact that in the diseño of Justo Larios the heads of the streams are not delineated, but they appear to be issuing from the range designated Sierra del Enciño, would you not understand that that range was intended to represent the main range in which the streams take their rise?

Answer 257. From the fact that the Sierra del Enciño is shown in elevation, and that the streams are large when they leave the base, I would infer that the streams rise in or beyond that Sierra; I do not think the diseño shows which; I do not think that the diseño proves that the Sierra del Enciño is the main range in which the streams take their rise.

Question 258. If you connect the head of arroyo Seco, at the point marked O, with station 65, by a straight line, about what area would be included between the lines "65," "O," "98," and the lines "65," "73," "90," "98," as actually run by you?

Answer 258. About 600 acres.

Question 259. Suppose on the diseño of Justo Larios a ridge had

been delineated north of the range marked Sierra del Enciño, parallel with it and separated from it by a narrow space, the relative position of the two corresponding to the relative position of the "Lomas Bajas" and Sierra Azul on the diseño of Berreyesa, and that ridge on the diseño of Justo Larios was designated "Lomas Bajas," or "Cuchilla de la Mina," how would you locate the southern line of Justo Larios according to his grant and diseño?

(Question objected by Mr. Peachy, on behalf of the United States, on the ground that it asks the witness his opinions as to what he would do on a supposed state of facts which is at variance with the grant and diseño and contradicted by them.)

Answer 259. I should follow the line heretofore described from station 65 to station 79, the point P & O, and station 101 to station 130.

Question 260. What is there on the diseño of Justo Larios which corresponds with that portion of the range marked "Lomas Bajas" on the espediente of Berreyesa, which lies on the land of Justo Larios, and west of the dotted line marked "Lindero?"

Answer 260. The eastern part of the Sierra del Enciño.

(Question and answer objected to by Mr. Peachy on behalf of the U. S.)

Question 261. Then do you consider the range marked Sierra del Enciño, on the diseño of Justo Larios, to be the continuation of the range marked "Lomas Bajas" on the diseño of Berreyesa?

Answer 261. I do.

Question 262. How do you account for that range being called "Lomas Bajas" on one side of the dividing line, between Berreyesa and Larios, and Sierra del Enciño on the other?

Answer 262. I do not know how to account for it.

Question 263. When you reached that ridge marked "Lomas Bajas," on the diseño of Berreyesa, in running the western line of Berreyesa from the point marked O through the point marked M, would you, if you were locating it from the grant and diseño of Berreyesa, consider that ridge as low hills and a distinct range from the main Sierra, and continue that western line of Berreyesa to the Sierra, or would you terminate that line at the point where you struck that ridge, and consider that ridge as part of the Sierra?

Answer 263. Under Berreyesa's diseño I would not terminate that line at the point marked "Lomas Bajas" in his diseño, but would cross that ridge and the arroyo Alamitos, considering the terminus of that line as at the base of the Sierra Azul, as shown in the diseño on the south side of said arroyo.

Question 264. What is there on the diseño of Justo Larios which corresponds with or represents the hill marked on the diseño of Berreyesa "Lomita," and by the eastern base of which the dotted line marked "Lindero" passes?

Answer 264. Nothing.

Question 265. Yet this hill lies wholly on the land of Justo Larios, does it not, and is a most important feature of the country, as affecting the boundary line between the two tracts, is it not?

Answer 265. I answer this question in the affirmative.

Question 266. If the range designated as the Sierra del Enciño, on the diseño of Justo Larios, was not intended to represent the main range in which the streams head, but the ridge marked on your map X Y, through which they break, would there not be represented on the diseño a gap or break in the range, at each of the points where the arroyo Seco and the stream designated as the arroyo de los Capitancillos leave the range?

Answer 266. In an accurate diseño there would be shown in either case a break at the base of the ridge at the point where the arroyo de los Capitancillos leaves the range; the bends of the stream would be hid by the mountains themselves. The arroyo Seco follows along the western end of the ridge X Y, and on the supposition no break is required to be indicated at this point.

Question 267. Taking the height of the house which is represented on this diseño as the scale, how high is the range marked Sierra del Enciño, as represented on the diseño?

Answer 267. It is about four times the height of the house, or about 60 feet.

Question 268. Which is represented on the diseño as the highest, the range marked Sierra del Enciño, or the eastern portion of the range marked Lomas Bajas?

Answer 268. The latter.

Question 269. What is their comparative height in fact?

Answer 268. The Sierra del Enciño, by which I mean the ridge X Y, is from $2\frac{1}{4}$ to $2\frac{1}{2}$ times as high as the Lomas Bajas at their eastern extremity.

Question 269. In what mode have you given your answers to the ques ions which have been put to you in the course of this cross-examination; have you answered them orally as they were read to you by the commissioner, or have you first written down and counted each of your answers, and then read it to the commissioner?

Answer 269. I have answered some of them orally, but generally in the mode last indicated.

Examination adjourned until to-mmorrow, September 13th, 1856.

Deposition not signed, by consent.

Examination resumed this 13th day of Sept., 1856.

Direct examination recommenced.

Questions by Att'y on behalf of U. S.

Question 270. What is a Cañada?

Answer 270. A valley.

Question 271. What sort of a valley is it, a broad one or a narrow one?

Answer 271. It is a valley of no great width, bounded on at least two opposite sides by hills or mountains.

Question 272. Describe the Cañada of the Capitancillos?

Answer 272. It is bounded on the north by a range called the Pueblo hills, and on the east and southeast by a range connecting with the former called the Laurel hills; on the south by the ridge X Y, and by a spur of Mount Choual—the Laurel hills are also a spur of Mount Choual; on the west it is bounded by the arroyo Seco, being unenclosed by hills in that direction.

Question 273. Look at the diseño of Berreyesa, Exh. N, page 10, and state what on your map, or map A. P. C., corresponds to the shaded surface found on that diseño, extending on the easternmost end of the hills lying on the northern side of the Cañada Capitancillos, and marked "Lomas bajas para la parte del plan del pueblo," and extending across the Cañada by the tree marked "laurel?"

Answer 273. It is the ridge marked on the map Laurel hill, and on which the positions of laurel trees is indicated, and marked laurel trees. This ridge shuts in or encloses the Cañada at its eastern or upper end.

Question 274. What on your map represents the shaded surface on Berreysa's diseño, lying to the north of the line representing the base of the Sierra Azul, marked "Lomeria?"

Answer 274. It represents generally the high spur of Mount Choual north of the line 11, 12, and south of the line L M, and east of the arroyo de los Alamitos, and west of L 11. This description is generally correct, but the part at the southeast corner, sloping to the arroyo de las Llajas, perhaps should be extended.

Question 275. When a Cañada is granted with a western and eastern limit by lines drawn across it, and giving its length from east to west, and nothing is said of breadth, how would you locate it?

Answer 275. I would make the location so as to include the whole Cañada, from the eastern to the western boundary as defined, making its northern boundary the southern base of the northern hills or mountains, and the southern boundary the northern base of the hills or mountains bounding the Cañada on the south.

Question 276. According to that mode of location, how would you locate that part of the Cañada de los Capitancillos which is bounded on the west by the arroyo Seco, and on the east by Berreyesa's western line, or rather by a line beginning at the junction of the arroyo Seco and Alamitos, and passing across the Cañada by the eastern base of the Loma?

Answer 276. I would make the eastern boundary the line from O to 64, on Exh. A. P. C.; the southern line the red line from station 64 to K, and the lines from K to 44, on the arroyo Seco; the western boundary, the arroyo Seco from station 44 to station 24; and the northern line, a line from 24, striking the southern base of

Pueblo hills at the nearest point, and then following the base to station O, to the place of beginning.

Question 277. Why would you locate the Cañada in that manner; I mean on the north and south sides?

Answer 277. Because if it is the intention of the grant to grant that part of the Cañada lying between the line O 64 and the arroyo Seco, I would feel bound to give him the whole breadth of the Cañada between these limits. If there were no other conditions to limit the grant, I think it might extend so as to include a portion of the hills on either side, sloping towards the valley.

Question 278. Suppose a tract of land was granted with a western, southern and an eastern boundary, without any reference to quantity or the character of the land included within its limits; (I mean with reference to its being valleys or hills;) how would you locate it?

Answer 278. I would make the northern boundary a straight line from the northern extremity of the eastern boundary to the northern extremity of the western boundary.

Question 279. Connecting the point O, on map A. P. C., with the point 24 at the junction of the arroyo Seco and Capitancillos, by a straight line, how much land would be included between that line and the Capitancillos?

Answer 279. 416 acres.

Question 280. Will you state why you added to the first survey of the rancho of Justo Larios, which you have described in your answer to the 5th question, the slip of land lying to the south of the southern boundary of your first survey, containing $811\frac{27}{100}$ acres?

Answer 280. It was added at the request of Mr. Peachy, to make up the full quantity of one league of land south of the arroyo de los Capitancillos, and between the eastern and western boundaries.

Question 281. Will you describe the places where the arroyos Seco and Alamitos emerge from the mountains and debouch into the valley?

Answer 281. The point where the arroyo de los Alamitos may be considered as entering the valley, is near where it is crossed by the line L M. The valley begins to open a little above this point, a little more than half way between it and the entrance of a small stream coming in from the east. At this point the hills on the east are very steep and abrupt; on the west not so steep. The hills continue steep on the eastern side, and about the same slope on the west, to the line L M. It is at the point where an *excavation* is made in the hill the road from San José to the hacienda. The point where the arroyo Seco emerges from the mountain is near the place marked "furnace" on the map; on the eastern side of this point the slope of the mountain is not very abrupt; on the

western side there are some low hills, but there is an interval of nearly level land between the base of these hills and the creek above; a little further up, about at station 127, the mountains are steep and close in abruptly on the creek.

Question 282. What is the length of a line drawn from about the middle of the line O M to station 34 on the arroyo Seco, at the western end of Justo Larios' rancho?

Answer 282. About 1½ leagues.

Question 283. Upon what scale is this map made?

Answer 283. On a scale of 20 ch's or 1,320 ft. to the inch, or of 4 inches to the mile.

Question 284. What is the direction of the establishment of Santa Clara from the rancho Justo Larios, and what the meaning of the word "Establecimiento de Santa Clara?"

Answer 284. By those Spanish words I understand the church of Santa Clara and the buildings belonging to it. Its bearing from a central position in this rancho is about northwest.

Question 285. What is about the average width of the Cañada between Justo Larios' eastern and western boundaries, measured from the southern base of the Pueblo hills, to the northern base of the range X Y?

Answer 285. It is a little more than one-half a league.

Question 286. You have spoken of the depression in the hills from the letter O, along the course of the arroyo Seco, down to the place where it emerges into the valley or the Cañada as a ravine. Does this word correctly express the character of that depression, and what word in Spanish would you use to designate it?

Answer 286. The word ravine correctly expresses the character of the depression referred to.

Question 287. What do you mean by a ravine?

Answer 287. I mean it in the sense applied to it in Webster's Dictionary, where it is defined to be "a long, deep and narrow hollow, worn by a stream or torrent of water; hence any long, deep and narrow hollow or pass through the mountains." I do not *not* think the word cañon means precisely the same thing. I do not know any Spanish word that precisely expresses the same meaning.

Question 288. Did you use the word ravine in the sense you have now given it on your cross-examination, when describing the character of the depression through which the arroyo de los Alamitos flows, from the point 79 until it emerges into the plain?

Answer 288. I did, and I also think the word cañon applies correctly to that part of the ravine through which the arroyo de los Alamitos flows between the points referred to.

Question 289. What is the name of that part of the Santa Cruz mountains which lies to the south of the Cañada of the Capitancil-

los from its head, as shown on Exh. A. P. C., through its whole length?

Answer 289. They are [*it is*] described on the diseño of Berreyesa to the south of that rancho as the Sierra Azul; the same range is also described by the same name on the diseño of Navaes, whose rancho lies to the westward and adjoining the rancho of Justo Larios, and the Sierra Azul is made one of his boundaries. I have frequently heard this range spoken of as the Sierra Azul, and it is a part of the range of mountains separating the valley of Jan José from the Pacific ocean, and frequently called the "Sierra de Santa Cruz."

Question 290. What is the outline of the Sierra Azul as viewed from a central point of the ranch Justo Larios?

Answer 290. The upper outline of the mountains shows two high peaks, rising apparently above the general level of the summit of the Sierra, resembling somewhat a wall with towers at each end. I now speak of the Sierra from Mount Bache to Mount Umunhum; these peaks are the peaks of Choual and Umunhum, neither of which are on the crest of the Sierra, but lie to the south of it; their position makes them appear higher, as compared to the crest of the Sierra back of them, than they really are. Mount Bache is on the summit, and appears from the point of observation as a peak of nearly the same apparent elevation as Choual, and very close to it. To the west of Umunhum the ridge appears about the same level as to the east of it, until we come to opposite the rancho of Narvaes, where the crest rises.

Question 291. What is the appearance of the ridge X Y, viewed from the same point?

Answer 291. The crest of the ridge appears to rise very rapidly from the Alamitos creek to the point marked on Exh. A. P. C. Peak of Mine Hill; a short distance west of this peak the mountains are very broken, and from this point of observation appear confused with the mountains on the eastern side of the arroyo de los Alamitos. Immediately westward of the peak, the crest of the ridge appears considerably lower than the peak itself. The crest then appears slightly undulating, but nearly level, to a point a little less than a half a league to the westward; proceeding westward the crest descends with tolerable uniformity, having a series of little summits, each generally lower than the preceding, to the vicinity of San Antonio mine, where there is a depression in the ridge; proceeding westward the crest rises, passing over another series of little summits, descends to another gap opposite the Guadalupe mine; it again rises, appears for a short distance nearly level, and finally descends to the plains.

Examination adjourned until Monday, September 15th, 1856, at 10 o'clock a. m.

Deposition not signed, by consent.

SAN FRANCISCO, CAL'A,
September 15*th*, 1856.

Parties not present.

Examination adjourned until to-morrow, September 16th, A. D. 1856, at 10 o'clock a. m.

SAN FRANCISCO, CAL'A,
September 16*th*, 1856.

Parties not present.

Examination adjourned until to-morrow, September 17th, A. D. 1856, at 10 o'clock a. m.

SAN FRANCISCO, CAL'A,
September 17*th*, 1856.

Examination of W. J. Lewis resumed.

Direct examination continued.

Questions by A. C. Peachy, on behalf of the U. S.

Question 292. If the hills marked Lomas Bajas, on the diseño of Berreyesa, were intended by Justo Larios to be represented by the Sierra del Enciño on his diseño, is there any reason why Justo Larios' eastern boundary should run the whole extent of Berreyesa's western boundary?

Answer 292. I think no good reason. Justo Larios' eastern boundary must terminate at the intersection of his southern boundary, which is the base of the Sierra del Enciño.

Question 293. State whether you have examined Justo Larios' diseño, being the original in the archives of the office of the surveyor general for California, and state in what respect the original differs from the traced copy in the transcript in the Guadalupe Mining Company, claim No. 142, in the district court of the United States for the northern district of California?

Answer 293. There is one difference which strikes me at present; the two sides of the arroyo de los Capitancillos, where it leaves the base of the Sierra del Encino, are in this copy of the diseño nearly opposite to each other, but in the original the margin represented on the left is considerably longer than the one on the right.

Question 294. Answer the same question in relation to the diseño in Charles Fossat, claim No. 132.

Answer 294. In this case the two sides of the arroyo de los Capitancillos are represented as beginning opposite to each other. In the original the left side of the arroyo starts from the base of the mountains; on this copy it stops short of it; no other difference.

Question 295. A line drawn along the base of the Sierra del Encino, as represented on Larios' diseño, would it leave any portion of the arroyo Seco and Capitancillos, as thereon delineated, to the south of it?

Answer 295. I think it would leave none of the arroyo de los Capitancillos, and it would leave a very small portion of the arroyo Seco.

Question 296. What is the distance from the point where the arroyo de los Alamitos intersects the line L M on the map A. P. C. to station No. 74 on the arroyo de los Alamitos?

Answer 296. One hundred and eighty-four chains, or $2\frac{3}{10}$ miles, or a little less than $\frac{9}{10}$ths of a league.

Question 297. What is the distance from station 98 to station 101, the first station being at the northern base of X Y, and the latter on the arroyo Seco?

Answer 297. About one hundred and thirty chains, (130)—$1\frac{5}{8}$ miles, or $\frac{5}{8}$ths of a league.

Question 298. What is the length of the line "V W?"

Answer 298. About one and one-fifth ($1\frac{1}{5}$) miles, or $\frac{41}{100}$ths of a league.

Question 299. What is the distance from station 44 to the place marked "Hotel," on the arroyo de los Alamitos?

Answer 299. Two leagues and seventeen hundredths ($2\frac{17}{100}$), or five and sixty-five hundredths ($5\frac{65}{100}$) miles.

Question 300. What is the distance from station 44 to the place where "L M" crosses the Alamitos?

Answer 300. About two and one-tenth ($2\frac{1}{10}$) leagues, or five and a half ($5\frac{1}{2}$) miles.

Question 301. What is the distance from station No. 30 to the letter E in the northeastern angle of the square "E F G H?"

Answer 301. About one and eighty-two hundredths ($1\frac{82}{100}$) leagues, or four and three-quarters ($4\frac{3}{4}$) miles.

Question 302. How much land would be contained in that portion of Berreyesa's rancho which is delineated on map A. P. C. by red lines, lying to the west of a line drawn from the northern boundary of Berreyesa's rancho perpendicular to the line "L M," at the point where that line crosses the Alamitos?

Answer 302. About eleven hundred and thirty (1130) acres.

Question 303. And about how much in that part of Berreyesa rancho, as located by said red lines, which lies to the west of the line "A B?"

Answer 303. About the same quantity; perhaps a little more.

Question 304. Supposing the line marked on Justo Larios' diseño "Lindero del Sor. Berreyesa" would strike the range marked "Sierra del Encino," at the point where the line "A B" intersects the line L M on the map A. P. C., and supposing, further, that the southern terminus of the arroyo marked arroyo Seco on Larios' diseño corresponds with the station 44 on the map A. P. C., what would be the ratio of Justo Larios' scale to your scale?

Answer 304. The ratio would be one to two and three-quarters.

Question 305. What, then, would be the distance, according to

this scale of Justo Larios for this line thus ascertained, from the southern terminus of that portion of the arroyo Seco which is delineated on the diseño, to the southern terminus of the arroyo named on this diseño arroyo de los Capitancillos?

Answer 305. About two leagues.

Question 306. State whether the heights of the hills, wherever marked on this map A. P. C., are correctly given.

Answer 306. I believe they are, and indicate the several heights above the sea.

Question 307. Describe where the arroyo Seco and Alamitos take their rise.

Answer 307. The principal branch of the arroyo de los Alamitos rises near the summit of the Sierra Azul, a short distance westwardly of Mount Bache; the principal branch of the arroyo Seco rises high up in the same Sierra northwestwardly of Mount Umunhum; the general course of both streams is shown in Exhibit A. P. C.

Question 308. Read that part of the decree of the board of land commissioners in the transcript of the claim of Charles Fossat, which describes the boundaries of the land confirmed, and describe on the map A. P. C. its western boundary.

Answer 308. I have not the data by which I can locate the line.

Question 309. Read that part of the decree of the board of land commissioners in the transcript of the claim of the Guadalupe Mining Company, No. 142, which describes the boundaries of the tract of land first confirmed, and describe those boundaries on the map "A. P. C."

Answer 309. The boundaries of the tract are represented on Exhibit A. P. C. by the lines V W, W S, and the arroyo Seco from the point S to point V.

Question 310. How much land is included between the line M, 65, the arroyo de los Alamitos, to the little branch which puts in from the east, a little below the hotel, a line thence drawn perpendicular to the line L M, and from the foot of this perpendicular to the point M?

Answer 310. About seven hundred and fifty (750) acres.

Question 311. State whether there is anything in the appearance of the Sierra del Encino, as drawn in the diseño of Justo Larios, showing that it was intended to represent that portion of the Sierra Azul lying to the south of the arroyo Seco, from the letter O to station 44, and to the south of the fork of the Alamitos from station 95, down to its junction with the little branch putting in from the east, a little below the hotel?

Answer 311. I think there is nothing.

Re-examination by Mr. Peachy for the United States concluded.

Questions by A. P. Crittenden, Attorney for Charles Fossat, claimant.

Question 312. How do you know that the boundaries given by

you in your answer to the 272 question are the boundaries of Cañada de los Capitancillos?

Answer 312. I know that the valley described is called the Cañada de los Capitancillos. The Cañada, in conformity with the meaning of the word, can include no more than ground which is level, or nearly so, between the bases of the surrounding heights. I take the definition from the dictionary of the Spanish Academy.

Question 313. Then you infer what are the boundaries of the Cañada de los Capitancillos from the meaning of the word and from the character of the country?

Answer 313. Yes.

Question 314. Did you ever hear the people of the county say that these were the boundaries of this Cañada?

Answer 314. I did not.

Question 315. Does not the northwestern part of the tract of Justo Larios bear a different name?

Answer 315. Not that I know of.

Question 316. Do you know any place in that vicinity called the "Porto Suelo?"

Answer 316. Yes, there is a point where the road crosses the southern foot of the little hill west of station 21, which I have heard spoken of as the Porto Suelo.

Question 317. If the arroyo Seco is the western boundary of the Cañada de los Capitancillos, would not this Cañada include those hills lying near the arroyo Seco, towards the northwest corner of the land?

Answer 317. It would.

Question 318. May not a place be designated as a Cañada, though it may include hills of considerable elevation, which are included between hills of still greater elevation?

Answer 318. It may, if the intervening hills are isolated, and there are strips of plain lying around it.

Question 319. In locating a tract of land which bears the name of a particular Cañada, would you be at all guided in determining the boundaries of the tract by your idea of the definition of a Cañada, or would you consider the name as an arbitrary designation of a place, and that the boundaries might well include hills, and even parts of adjacent hills and mountains?

Answer 319. The fact of a Cañada being included in a tract, and being the most prominent characteristic, might give the name to a rancho, including not only the Cañada but parts of adjacent hills and mountains; in this case, I would give to the designation of the rancho only the weight which I think it deserved, in connection with the other circumstances of the grant.

Question 320. Do you not know of instances in which the name Cañada has been applied in California grants to tracts of land,

which tracts not only included the valleys from which the names were derived, but also the adjacent hills, or portions of them?

Answer 320. I do; I will instance the Cañada del Rincon de San Lorenzo.

Question 321. If you wanted to ascertain what the boundaries of a particular Cañada were, how would you do it where there was a long valley, not shut in by hills on all sides? How would you ascertain what portion of the valley was called the Cañada—by your own examination of the country, or by inquiry of the people of the country?

Answer 321. By inquiry of the people of the country.

Question 322. When you stand on the plain in the vicinity of the arroyo de los Capitancillos, on this tract of Justo Larios, and look at the ridge marked X Y on the map A. P. C., and at the main range south of it, what peculiar appearance is observable as distinguishing the ridge from the main Sierra?

Answer 322. The main Sierra has a deep blue appearance.

Question 323. Is the outline of the ridge marked on map A. P. C. "X Y," rugged, or smooth and regular; does it present any broken lines or steep peaks?

Answer 323. It presents a series of peaks, which are not generally broken and rugged, but rather graceful in their outline.

Question 324. What does the line L M represent?

Answer 324. It is a line on Exhibit A. P. C., which represents such a location of the southern line of Berreyesa as to include the whole length of the Cañada, and, with his other lines, to embrace one league of land.

Question 325. Upon the supposition contained in question and answer 304, that the scale by which the diseño of Justo Larios is drawn is, as to the scale by which your map A. P. C. is drawn, in the proportion of 1 to $2\frac{3}{4}$—in other words, that the scale of your map is $2\frac{3}{4}$ times that of the diseño of Larios—you say that the distance between the arroyo Seco and the arroyo de los Capitancillos, along the base of the Sierra del Encino, on the diseño of Justo Larios, is about two leagues. Now, taking the same scale, what is the distance from the base of the Sierra del Encino, on this diseño, to the arroyo de los Capitancillos, measured across the middle of the rancho?

Answer 325. About one league.

Question 326. Measuring on your map A. P. C. along the same line one league from the arroyo de los Capitancillos, about what point would you reach?

Answer 326. A point several hundred varas south of the arroyo Seco, about opposite station 111.

Question 327. Taking this scale as correct, and giving to the tract of land the full width, north and south, called for by the diseño, and taking either the arroyo de los Capitancillos or the

southern base of the hills north of this arroyo, and marked "Lomas Bajas," as the northern boundary of the tract, you would include, would you not, the whole of the ridge marked X Y on map A. P. C.?

Answer 327. Yes.

Examination adjourned sine die.

(Signed) WM. J. LEWIS.

Sworn to and subscribed before me, this 19th day of September, A. D. 1856.

(Signed) GEO. PEN JOHNSTON,
U. S. Commissioner.

Memorandum.—The deposition was not signed by the witness until the 19th September, although the examination concluded on the 18th.

The foregoing deposition is taken subject to all substantial exceptions to the questions and answers, which exceptions may be taken on the trial of the case.

(Signed) WM. BLANDING,
U. S. Dist. Att'y N. D. of Cal.

(Signed) A. P. CRITTENDEN,
Att'y for Chs. Fossat.

Endorsed: Filed October 3d, 1856.
JOHN A. MONROE, *Clerk.*
Pr. W. H. CHEVERS, *Deputy.*

[*For map see original, page* 267.]

Exhibit N, attached to Depo. of Wm. J. Lewis.

Espediente promovido, por el ciudadano José Reyes Berreyesa, en solicitud del parage nombrado "La Cañada de los Capitancillos."

293.

Espediente promovido, p'r el ciudadano José R. Berreyesa, en solicitud del parage nombrado Cañada de los Capitancillos.

Ex'mo Sr.: El cuid'o José R. Berreyesa, vecino del pueblo de S. Monterrey Ju— Jose Guadalupe: ante V. E. comonio 6 de 1842. Mas haya lugar y el derecho le permite se presenta y dice; q. ya hace el dilitado tiempo demas de ochoaños que se haya vadicado en el parage nombrado S. Vincente, Cañada de los Capitancillos; cuyo parage le fue concedido oficialmente p'r el finado Sr. Grl. D. José Figueroa, en el q. há subsistido hasta la f'ha con su muy numerosa familia; y aunque a pesando haver hecho varias instancias en solicitud de obtener el titulo correspondente p'a aseguvar su legitima propiedad, no ha podido h'ta ahora lograre esta satisfacion cuya demora a dado lugar a q. su colindante Justo Larios rumbado su casa y plantado la en el intermedio q. los dividia q. heran como cosa

de los leguas poco mas ó menos con detrim'to del agua q. le quito al ganado y lo auyerto p'r esa parte y aun sin embargo se q. no se debe conciderar este con tanto derecho como se lo huse sugerido varios seductores enemigos del orden social, q. como vieron q. yo pretendia se partiera la difirencia del terreno le aconsefaron puciera su casa en la dicha mediacion p'a de este modo entorpecer del tort mis intenciones. Por que si hace tres ó cuatros años q'e se haya substituido p'r Leandro Galindo, este no hiso mas de venderle la casa y no el terreno p'r q'e no se hayaba con derecho para ello, y sin embargo, él anda p'r vender el parage como ya lobo averifecar; p'r donde se infiere; se q. no lo necesita, ó no tiene mayor intera en él.

Ya la vez S'r Ex'mo q'e el expresado mi colindante a usado de esta arvitrariedad (como el mismo me lo dijo) se poner su casa facultativam'te en el intermedio este sea el lindero q. nos divida, si V. E. lo tiene a bien, p'r q'e el tiene a donde estenderse q'e es p'e fuera de la Cañada q'e a nadie pertenese; y yó no tengo absolutamente a donde alargarme.

Mi solicitud a sido siempre de dos sitios, y a hora la hago lo mismo; q'e es decir desde la casa de Justo Larios hasta el matadero, con todas las lomas q'e pertenecen a la h'ha Cañada.

Los derechos q'e en esta parte me pueden favorecen, son 26 años y 4 meses mas q'e servi la patria en la carrera militar, desde soldado h'ta sarg'to en que usé de mi licencia absoluta sin nota ninguna como consta p'r ella. Y despues de haver sacrificado, toda mivida, salé al fin, sin pagam'to ninguno, perdidos mis averes; y solam'te con once hijos de familia, q'e se hayan actualm'te en mi comp'a y a mi sombra, y dé estos casados cuatro de ellos, y tengo el honor de acompañar a V. E. el diseño respectivo. Por tanto—

A. V. E. rendidam'te suplico, se digne tener en concideracion, todo cuanto de yo espresto, y ver proprio esta mi suplicatoria de q'e le viveré reconocido.

Rancho de S. Vicente, 2 de Junio, de 1842.

JOSÉ R. BERREYESA.

MONTERREY, *Junio* 6, *de* 1842.

Ynforme el juez de paz del pueblo de S'n José.

ALVARADO.

En virtud de la orden q'e V. E. ve sirbir ordenar me a q'e se presentaran en este juzgado de mi cargo, los C. C. José Reyes Berreyesa y Justo Larios, presentando los docum'tos q'e acrediten las solicitudes ó propiedad sobre el torreno llamado Cañada de Capitancillos; al efecto, el primero presento el espediente q'e antecede, esponiendo tener dos reprecentaciones mas, en la prefectura del distrito, el segundo feré llamado y no se presento mas se adquiro p'r D'n Dolores Pacheco anterio mio q'e larios habia presantado un espediente en el año 40 y se halla en d'ha prefectura; se ha d'ho antes q'e Larios no se habia presentado, y al tiempo de escribir las

ultimas lineas se presentos dio la misma razon dada p'r D'n Dolores Pacheco.

El Sargento Reyes Berreyesa dijo era conforme en la superior disposicion q. V. E. tubiera a bien disponer.

Pueblo de San José, Junio 11, de 1842.

ANTONIO BUELNA.

MONTEREY, *Junio* 13, *de* 1842.

Ynforme la prefectura, con presencia de los documentos ó solicitudes a que se refierre el informe del juez de paz del Pueblo de S'n José.

ALVARADO.

Exmo. S. Gob'r de este Departam'to:

Con él mayor ciudado se há solicitado en el archivo de este oficina el espediente de q'e hace mencion en su informe el S. juez de paz de S'n José, pertenec'te a D. Justo Larios y no existe; dougra se el q'e promobio el C. José R. Berreyesa y en vista de estos docum'tos del informe del citado juez y de la honera numerosa familia y buenos servicios del S. Berrelleza, la prefectura de mi cargo opina q'e puede concedersele el terreno que prentente y consta en el adjunto diceño sirviendole de limites la casa de D. Justo Larios; mas sin embargo V. E. resolvera lo q'e estimo mas en justicia.

Protedo a V. E. las seguridades de mi respecto.

Monterey, Junio 14, de 1842.

JOSÉ B. ESTRADA.

MONTEREY, *Junio* 15, *de* 1842.

Corrase trastado a la parte de Justo Larios para que alogue cuanto crea conveniente a sus derechos justificando al mismo tiempo conforme a la ley los meritos y servicios echos a la patria.

ALVARADO.

MONTERREY, *Ag'to* 10, *de* 1842.

Haviendo convenido la parte de Larios y de Berreyesa estar conformes con los linderos denunciados en el diseño adjunto y en vertud de esta ocupando y cultivando el terreno este p'r algun tiempo espedarse el titulo correspondiente.

ALVARADO.

MONTEREY, 20 *de Ag'to*, *de* 1842.

Vista la peticion con que da principio este espediente, los informes que preseden con todo lo demas que se tubo presente y ver somvino declaro en conformidad á los leyes respectivos diceño en propiedad al ciudadano José R. Berreyesa, de una parte del parage nombrado Cañada de los Capitancillos, colindante al norte con las lomerias baja inmediates al plan del pueblo de San José, al sur con la Sierra, al oriente con las lomerias del Laurel, y al poniente con el rancho del ciudadano Justo Larios, el cual tiene por lindero el angulo que forma el arroyo Seco y el de las Alamitos, la falda

de la loma situada en el sentro de la Cañada y la Sierra. Librese el correspond'te despacho tomase razon en el libro respectivo y dirijase este esped'te á la exma. junta departamental para su aprobacion.

El S'r D'n Juan B. Alvarado, gobernador constitucional de las Californias, asi lo probe yo mando y firmo.

EXMO. SEÑOR: Los litigantes C. C. José Berreyesa y Justo Larios han combenido ante mi en que los linderos de ambos al rumbo del E. Segun demuestra el diseño de Berreyesa sea tirando una recta des el angulo que forma el arroyo de los Alamitos con el Seco rumbo al S. la falda de la loma situado en el sentro de la Cañada hacia el E'rg hasta llegar á la Sierra: de manera que segun el espresado diseño, que parece mas esaeto, la repetida linea biene á ser una paralela que yo he demarcado con puntos para el conocimiento de V. E.

Con lo que han quedado aquietados y conformes.

Monterey, 16 de Junio, de 1842.

JOSÉ Z. FERNANDEZ.

(Here follows the diseño.)

[*For map see original, page* 274.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el ciudadano José Reyes Berreyesa ha pretendido para su beneficio personal y el de su familia una parte del parage nombrado Cañada de los Capitancillos. Colindante al norte con las lomerias bajas inmediatos al plan del pueblo de S'n José, al sur con la Sierra, al oriente con las lomerias del Laurel y al poniente con el rancho del ciudadano Justo Larios, el cual tiene por lindero el angulo que forma el arroyo Seco y el de los Alamitos rumbo al sur, la falda de la loma situada en el seritro de la Cañada, asi al este hásta llegara la Sierra; practicadas proviamente las diligencias y averiguaciones consernientes lo dispuesto por leyés, usando de las facultades que me son conferidas a nombre de la nacion Mejicana hé benido en concederle el terreno mecionado, declarandole la propiedad de el por los presentes letras sugeto a la aprobacion de la exma. junta departamental y a las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las travesias, caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, per dentro de un año fabricara casa y estara habitada.

2a. Solicitará del juez respectivo que le de posecion juridica en virtud de este despacho p'r el cual se demarcaran los linderos en cuyos limites pondrá a mas de las mojoneras algunos arboles frutales ó alvestres de alguna utilidad.

3a. El terreno de que se hace mencionés de uno sitio de ganado mayor poco mas ó menos segun esplica el diseño que corre en el esped'te respectivo. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos que mas le conbengan.

4a. Se contrabieniere á estas condiciones perderé su derecho al terreno y será denunciable por otro.

En concecuencia mando que tiniendoze por firme y valdero esté titulo se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte de Agosto, de mil ochocientos cuarenta y dos.

Ex'mo S'r: El C. Jose R. Berreyesa vecino del pueblo de S. Jose Guad'e ante V. E. como mas haya lugar y el derecho le permite se presenta y dice: que hace ya el tiempo de diez años qe. se haya radicado y establacide con su numerosa familia en este su rancho S. vicento Cañada de los Capitancillos; y desde aquella f'ha no ha omitido diligencia alguna para poder con seguir su despacho ó su titulo qe. le aseguire su legitima propiedad pr. qe. aunque en el año anterior de cuarenta y dos, recivio su titulo espedido pr. el Sr. D. Juan B. Alvarado, pero como no hera conforme al espediente que presentes a la superioridad a causa de qe. me sugetaba a un sitio puramente, siendo asi qe. desde un principio siempre ha sido mi solicitud de dos sitios, pa. ganada mayor y qe. actualm'te los tengo ocupados, como es constante y verificio con la cantidad de seis cientos reses y pr. esta causa no pudo admitir el titulo qe. me mandaron en aquella vez y fuy yo mismo en persona, y se lo debolve y entregue en sus manos a D. Manuel Jimeno, diciendole la causa pr. que no me conformaba con el y como en aquellos dias fue y sesedo la toma de Monterey, yo me retire y no he podido bolbere a hir a este negocio tan urgente pero a hora con ocasion qe. ba una persona de mi casa lo hago por medio de este escrito suplicando a V. E. si lo tiene a bien, ordena qe. se me estienda y remita mi despacho correspond'te, en estos terminos; desde la punta de la lomita asi al poniente qe. esta en el sentro de la Cañada hasta el plan del arroyo de la Yagas entre la cierra y con todo el lomerio qe. pertenece a la dicha estrecha Cañada de los Capitancillos y qe. tiene de longitud dos sitios, poco mas ó menos, y de latitud no tiene un cuarto de legua, ni en lo mas ancho qe. es donde tengo mi casa, y subsistencia. Por tanto A. V. E. rendidam'te suplico se digne ver propicio esta mi suplicatoria de qe. le vivire reconocido.

S. Vicente, 10 de Feb'o, de 1844.

JOSÉ R. BERREYESA.

Monterrey, *Feb'o* 15, *de* 1844.

Ynf'e el S. s'rio del despacho.

MICHELT'A.

SOR. GOBERNADOR: Al que representa se le concedio un sola s'tio de ganado mayor como consta en el espediente respectivo, y si su pretencion es de tener mas estencion, seria conv niente que in'ormara el juez del pueblo de San Jose con citacion de los colindantes, principalm'te con el vecino Justo Larios con quien antes tubo cuestion.

No tengo presente que me haya entregado su titulo el interesado, y ni tenia para que digarme ese documento que tal vez no sabra verdaderamente dondo lo puso, pero si necesitare un testimonio de la concesion que se le hizos puede presentar el papel sellado que corresponde. El superior discernimiento de V. E. resolvera lo que crea conveniente.

Monterre y, Feb'o 15, de 1844.

MAN'L JIMENO.

MONTERREY, *Feb'o* 16, *de* 1844.

Como informa el S. s'rio de mi despacho informe el juez con citacion de la colindantes uayo qe. se *coacney* aquel vúelva el interesado con el papel respectivos pa. el nuevo titulo.

MICHELT'A.

En cumplimiento a lo dispuesto pr. el superior govierno en diez y seis de Feb'o del presente ano hise comparecer a Dn. Justo Larios como colindante del terreno de que. se hase mencion en la precedente instancia, y hecho presente a este, el escrito firmado pr. el interesado, espreso qe. pa. dar su pareser en esa presiso premeditar y llegar ante el gobierno, pero en seguida medua una mutua conbenacion y es en la forma qe. sigue. El Rincon del arroyo conocido por nombre los Alamillos qe. confronta con la punta de la loma servira de lindero a ambos partes y asi quedan sujetos los interesados.

Es cuanto a la vez puedo informar sobre el particular.

Pueblo de S. Jose, Mayo 22, de 1844.

ANTONIO MA. PICO.

EX'MO SOR. GOBERNADOR: Segun la conformidad del colindante Justo Larios parece qe. no hay inconveniente alguno para que se le estienda nuevo titulo.

Monterrey, Julio 15, de 1844.

MAN'L JIMENO.

MONTERREY, *Julio* 23, *de* 1844.

Espidase.

MICHELT'A.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish

and Mexican Territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the seventeen preceding and hereunto annexed pages of tracing paper, numbered from one to seventeen inclusive, exhibit a true and accurate copy of a certain document now on file, and forming part of the said archives, in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this fifth day of September, 1855.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1853:

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California) and any copy or extract from the plates, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Exhibit N, attached to deposition of W. J. Lewis.

Exhibit O.

Espediente "presented by the citizen José Reyes Berreyesa, petitioning for the place called Cañada de los Capitancillos."

293.

Most Excellent Sir: The citizen José R. Berreyesa, resident of the town of San José Guadalupe, before your excellency in the most formal manner, and as the law permits, presents himself and says: that for the long period of more than eight years he has been settled in the place called "San Vicente Cañada de los Capitancillos," which place was officially granted to him by General Don José Figueroa, deceased, where he has subsisted up to this time with his very numerous family, and notwithstanding many efforts made by him in endeavoring to obtain the corresponding title, to insure his legitimate possession, he has not been able *up* to enjoy that satisfaction; the delay has given room to occupant of the land adjoining, one Justo Larios, to remove his house and set it in the intermediate space which separated them, and which was in extent about two leagues, little more or less, doing damage thereby in diverting the water from the cattle, and driving it away from that place; and even, notwithstanding he should not consider himself as having so much right as has been suggested to him by sundry corrupt persons, enemies of social order, who, when they saw that I proposed to divide the difference of the land, advised him to place

his house in the said intermediate space, so as in this way to completely frustrate my intentions. For if it is three or four years that he has been the substitute of Leandro Galindo, this latter person did nothing more than sell him the house, and not the land, for he had no right to do that; and nevertheless he goes about trying to sell the place, and is really about to accomplish his purpose, from which it is to be inferred that he does not need it, or takes no great interest in it.

And at the same time, most excellent sir, that my aforesaid neighbor has proceeded so arbitrarily (as he himself told me) to place his house by authority in the intermediate space, let this be the boundary between us, if your excellency deem proper, for he has room to extend on the (land) outside of the valley, which belongs to nobody, and I have absolutely nowhere to enlarge.

My petition has always been for two "sitios," (leagues,) and I now make it for the same, namely, from the house of Justo Larios up to the slaughtering place, with all the hills that belong to said valley.

The rights which in relation hereto may avail me are 26 years and 4 months more that I served the country in the military career, from private to sergeant, when I obtained my absolute discharge, without imputation whatsoever, as thereby shown, and after sacrificing all my lifetime I left at last without any pay, my property lost, and only with eleven children of the family, who are at this present time in my company, and under my care, and of these four married. And I have the honor to present to your excellency herewith the respective map (diseño); therefore I humbly pray your excellency may be pleased to take into consideration all that I have set forth, and favorably regard this my petition, for which I shall be thankful.

Rancho of San Vicente, 2d June, 1842.

JOSÉ R. BERREYESA.

MONTEREY, *June 6th*, 1842.

The justice of peace of the town of San Jose will report.

ALVARADO.

In virtue of the order which your excellency was pleased to send me that the citizens Jose Reyes Berreyesa and Justo Larios should appear in this tribunal under my charge, presenting the documents which may accredit the petitions or ownership concerning the land called Cañada de Capitancillos, in pursuance thereof the first presented the foregoing espediente, making known that he had two other memorials in the prefecture of the district.

The second was called and did not present himself, but I ascertained through Don Dolores Pacheco, my predecessor, that Larios had presented an espediente in the year '40, and it is in said prefecture.

It has been said hereinbefore that Larios had not presented himself, and at the time of writing the last line he appeared and gave the same account given by Don Dolores Pacheco.

The sergeant Reyes Berreyesa said he submitted to the superior disposition which your excellency might deem proper to make.

Town of San José, June 11th, 1842.

ANTONIO BUELNA.

MONTEREY, *June* 13*th*,1842.

The prefecture will report, having present the documents or petitions to which the communication of the question of peace of the town of San José refers.

ALVARADO.

Most Excellent Governor of this Department:

The espediente belonging to Don Justo Larios, of which the justice of peace of San José makes mention in his report, has been sought for in the archive of this office with the greatest care, and does not exist; there appears, however, that which was presented by the citizen José R. Berreyesa.

And in view of these documents, of the report of the aforesaid judge, and of the honesty, numerous family, and good services of Señor Berreyesa, the prefecture of my ministration is of opinion that the land which he solicits, and which is described in the annexed map (diseño,) may be granted to him, the house of Dn. Justo Larios serving as boundary.

Nevertheless, your excellency will resolve whatsoever you esteem to be most in accordance with justice.

I offer to your excellency the assurances of my respect.

Monterey, June 14th, 1842.

JOSÉ R. ESTRADA.

MONTEREY, *June* 15*th*, 1842.

Deliver a copy of proceedings to Justo Larios, so that he may allege whatever he thinks important to his rights, justifying at the same time, according to law, the merits and services done to the country.

ALVARADO.

MONTEREY, *August* 1*st*, 1842.

The parties, Larios and Berreyesa, having agreed to conform to the boundaries denounced (shown) in the annexed map (diseno,) and in consideration of the land being occupied and cultivated for some time, let the corresponding title be issued.

ALVARADO.

MONTEREY, 20*th August*, 1842.

In view of the petition with which this espediente was begun, the foregoing reports, with all other matters known and proper to

be considered, in conformity with the respective laws, I declare the citizen Jose R. Berreyesa owner in property of a part of the place called Cañada de los Capitancillos, bounded on the north by the low hills, (lomerias Bajas,) in the vicinity of the plain of the town of San Jose, on the south by the mountain range (la Sierra,) on the *the* east by the hills of the Laurel, (laurel tree,) (lomerias del laurel,) and on the west by the ranch of citizen Larios, which has for boundary the angle formed by the Dry creek (arroyo Seco,) and that of the Alamitos (little poplars,) the base of the low hills (la falda de la loma,) situated in the centre of the valley Cañada and the mountain range la Sierra.

Let the corresponding decree (despacho) be issued, a register thereof made in the respective book, and the espediente be directed to the most excellent departmental junta for its approval.

Don Juan B. Alvarado, constitutional governor of the Californias, so provided, ordered and signed.

MOST EXCELLENT SIR: The litigants, citizens Jose Berreyesa and Justo Larios, have agreed before me that the boundaries of both in the direction of the east, as shown in the map (diseño) of Berreyesa, shall be drawing a straight line from the angle which the arroyo (creek) Alamitos forms with the Dry creek (arroyo Seco,) direction southward, the eastern base of the low hill (loma) situated in the centre of the valley (Cañada,) and until reaching the Sierra (mountain,) so that, according to the diseño (map,) which appears more exact, the said line becomes a parallel, which I have marked with dots for the knowledge of your excellency.

With which they have rested satisfied and conformable.

Monterery, 16th June, 1842.

JOSÉ Z. FERNANDEZ.

(Here follows the diseño.)

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas the citizen Jose Reyes Berreyesa has solicited, for his personal benefit and that of his family, a part of the place called Cañada de los Capitancillos, bounded on the north by the low hills (lomerias Bajas,) in the vicinity of the plain of the town of San Jose, on the south by the mountain Sierra, on the east by the laurel-tree hills (lomerias del laurel,) and on the west by the rancho of citizen Justo Larios, which has for its boundary the angle which the arroyo Seco (Dry creek) forms with that of the Alamitos, (little poplars,) direction southward, the eastern base of the low hill situated in the centre of the valley Cañada, until reaching the Sierra (mountain,) the necessary proceedings and inquiries relative thereto having been made in accordance with the laws, in the exercise of the powers which are conferred on me, in the name of the Mexican nation, I have

granted to him the said land, declaring it to be his property by these presents, subject to the approval of the most excellent junta departamental, and to the following conditions:

1st. He can enclose it without detriment to the crossings, roads and servitudes; he can enjoy it freely and exclusively, appointing it to the use or culture that he pleases; but within one year he shall build a house, and it shall be inhabited.

2d. He shall apply to the respective judge to give him judicial possession in virtue of this decree, by whom the boundaries shall be marked, on which, in addition to the landmarks, he shall place some fruit trees or forest trees of some utility.

3d. The land of which mention is made is one sitio de ganado mayor (one league,) a little more or less, as shown in the diseño (map) which is placed in the respective espediente. The judge who gives the possession will cause it to be measured according to regulation, leaving the surplus which results to the nation for the uses which may be found most convenient.

4th. If he violates these conditions, he will lose his right to the land, and it will become subject to denouncement by another.

Therefore I order that this title, being held firm and valid, be registered in the corresponding book, and delivered to the party interested for his safeguard and other purposes.

Given at Monterey the twentieth of August, eighteen hundred and forty-two.

Most Excellent Sir: The citizen José R. Berreyesa, a resident of the town of San Jose Guadalupe, before your excellency, as may be most formal, and as the law permits, presents himself and says: That it is now ten years since he has been settled and established with his numerous family in this his rancho of San Vicente Cañada de los Capitancillos, and since that date he has not omitted any measure in order to obtain his patent (despacho,) or a title which may insure to him the legitimate ownership, for although, in the preceding year of forty-two, he received a title issued by Don Juan Alvarado, yet, as it was not in conformity with the espediente which he presented to the superior authority, inasmuch as it limited me to one sitio only, while from the first my petition was for two sitios for horned cattle (ganado mayor,) which I already have in occupation, as is shown and verified by me, with the number of six hundred head (reces,) for this cause I could not admit the title which was sent to me at that time, and I went myself in person and returned it, and gave it into the hands of Don Manuel Jimeno, telling him the reason why I was not satisfied with it; and as the capture of Monterey happened about that time, I retired, and have not been able to proceed again in this matter, so urgent; but now, by a person going from my house, I avail myself of the occasion to do so through this writing, praying your excellency may be pleased to order that the corresponding despacho (decree) be made out

and remitted to me in these terms, from the point of the little hill towards the west which is in the centre of the valley (Cañada,) to the plain of the (arroyo de las Llagas) rivulet of the Llagas among the mountains (Sierra,) and with all the hill country (lomesio) which pertains to said narrow valley of the Capitancillos, and which contains in length *to* sitios, a little more or less, and in breadth it has not a quarter of a league in the widest part, which is where I have my house and subsistence.

Therefore I humbly pray your excellency to be pleased favorably to receive this my petition, for which I will ever be grateful.

Vicente, 10th February, 1844.

JOSÉ R. BERREYESA.

MONTEREY, *February* 15*th*, 1844.

The secretary of the office will report.

(Signed) MICHELTORENA.

MR. GOVERNOR: There was granted to the applicant one sitios de ganado mayor only, as is seen by the respective espediente; and if his petition is to have a greater extent, it would be well that the judge of the town of San José should report, with citation of the adjacent occupants, especially the neighbor Justo Larios, with whom he had heretofore a dispute.

I do not recollect that the party interested delivered his title, neither had he a motive for leaving me that document. Perhaps he does not truly know where he placed it; but if he should need a testimony of the grant which was made to him, he can present the corresponding stamped paper.

The superior discernment of your excellency will determine what may be proper.

Monterey, 15th February, 1844.

MAN'L JIMENO.

MONTEREY, *February* 16*th*, 1844.

As recommended by the secretary of my office, let the judge report, with citation of the adjoining occupants, and so soon as that is disposed of, the party interested will return with the respective paper for the new title.

(Signed) MICHELTORENA.

In fulfilment of the disposition of the superior government of the sixteenth of February of the present year, I caused Don Justo Larios, as an occupant of the adjoining land of which mention has been made in the preceding instance, to appear; and making him acquainted with the writing presented by the party interested, he alleged that in order to give his opinion, it was necessary that he should think over it and go before the government; but afterwards he gave me a mutual agreement, and it is in the following form: "The angle (corner rincon) of the rivulet (arroyo) known by the

name of Las Alamillas, which faces the point of the hill, (loma,) shall serve for boundary to both parties, and to this both parties are agreed."

This is all that I can at the time inform about the matter.

Town of San José, May 22d, 1844.

ANTONIO MARIA PICO.

Most Excellent Governor:

According to the assent of Justo Larios, adjoining, there appears to be no objection to the extending a new title to him, (the applicant.)

Monterey, July 15th, 1844.

(Signed) MAN'L JIMENO.

MONTEREY, *July* 23*d*, 1844.

Let it be issued.

(Signed) MICHELTORENA.

Attached to Depo. of W. J. Lewis—A. X., Exhibit No. 2.

A. X.

Rancho de los Capitancillos—Justo Larios.

Abstract of Field Notes.

Beginning at an alder stump, which I marked O, at the junction of the "arroyo Seco" with the "arroyo de los Alamitos;" thence following down the arroyo de los Capitancillos—

Station.	True course.	Chains.	Station.	True course.	Chains.
1	N. 50° 30′ W.	2.75	13	N. 62° 00′ W.	14.14
2	N. 77° 25′ W.	6.00	14	N. 32° 15′ W.	13.00
3	N. 61° 55′ W.	3.10	15	N. 72° 45′ W.	14.45
4	N. 55° 15′ W.	4.70	16	N. 54° 00′ W.	13.47
5	N. 59° 00′ W.	16.00	17	N. 77° 25′ W.	7.30
6	N. 31° 40′ W.	14.75	18	N. 89° 15′ W.	7.87
7	N. 49° 20′ W.	11.80	19	N. 24° 00′ W.	8.20
8	N. 78° 00′ W.	9.90	20	N. 11° 45′ E.	14.00
9	N. 61° 15′ W.	8.50	21	N. 5° 50′ W.	9.72
10	N. 60° 45′ W.	11.50	22	N. 21° 00′ W.	17.00
11	N. 66° 50′ W.	17.70	23	N. 15° 45′ W.	17.00
12	N. 47° 45′ W.	8.58	24	N. 24° 00′ W.	12.60

to a tree marked N, at the junction of the arroyo de los Capitancillos with the arroyo Seco; (this tree was marked by S. Day as a corner of the rancho of Augustin Narvaes;) thence running up the arroyo Seco—

Station.	True course.	Chains.	Station.	True course.	Chains.
25	S. 71° 00′ W.	28.43	34	S. 82° 05′ W.	7.08
26	S. 59° 00′ W.	15.31	35	S. 59° 45′ W.	34.75
27	S. 23° 30′ W.	11.00	36	S. 30° 45′ W.	2.50
28	S. 63° 30′ W.	12.51	37	S. 25° 15′ E.	2.88
29	S. 59° 00′ W.	9.00	38	S. 39° 15′ W.	8.47
30	S. 37° 30′ W.	10.69	39	S. 6° 15′ E.	16.34
31	S. 53° 15′ W.	8.93	40	S. 83° 30′ W.	3.58
32	S. 64° 30′ W.	6.73	41	S. 72° 45′ W.	4.65
33	N. 80° 45′ W.	5.91	42	S. 64° 45′ W.	5.00
			43	S. 18° 30′ E.	1.82

44 S. 21° 05° W. 27.74 chains to a sycamore tree on the east bank of the arroyo, which I marked with a X; thence 45 S. 79° 15 E. 12.00 chains to a white oak, which I marked C, at the base of the Mine ridge; thence following the northern base of the Mine ridge.

Station.	True course.	Chains.	Station.	True course.	Chains.
46	N. 61° 14′ E.	23.87	56	S. 59° 40′ E.	21.87
47	N. 49° 45′ E.	10.34	57	S. 63° 00′ E.	38.62
48	N. 80° 05′ E.	21.83	58	S. 68° 15′ E.	21.75
49	S. 80° 45′ E.	11.17	59	S. 79° 25′ E.	16.33
50	S. 43° 10′ E.	38.70	60	S. 42° 50′ E.	16.60
51	S. 33° 15′ E.	14.00	61	S. 69° 40′ E.	18.81
52	S. 42° 05′ E.	15.00	62	S. 57° 15′ E.	25.00
53	S. 75° 40′ E.	8.54	63	S. 71° 20′ E.	12.08
54	S. 59° 35′ E.	20.50	64	S. 63° 30′ E.	25.22
55	S. 34° 40′ E.	18.00			

Thence in a straight line passing at the eastern base of the low hills in the middle of the valley, N. 1° 49′ W. 111.03 chains to the alder stump marked "O," at the junction of the arroyo de los Alamitos, the place of beginning; contents 3,529 acres, or $811\frac{27}{100}$ acres less than one league.

Between the line on the map marked I J K, and the arroyo de los Capitancillos, there is included one league.

A. Y.—*Exhibit No.* 3, *attached to the Deposition of W. J Lewis.*

A. Y.

Rancho de los Capitancillos.

(Justo Larios.)

Abstract of field-notes of the survey south of the northern base of the Mine range, beginning at station number 64 of the last described survey, at the northern base of the Mine ridge, and on the eastern line of the rancho do los Capitancillos; thence in continuation of said line, sta. 65, S. 1° 49′ E., 176.52 chains to the most northern branch of the arroyo de los Alamitos; thence following up said branch of said arroyo.

Station.	True course.	Chains.	Station.	True course.	Chains.
66	N. 73° 15′ W.	1.83	78	N. 70° 15′ W.	7.46
67	N. 71° 30′ W.	3.37	79	N. 58° 10′ W.	9.00
68	S. 84° 45′ W.	4.50	80	N. 57° 15′ W.	1.67
69	S. 75° 45′ W.	3.47	81	N. 66° 15′ W.	5.00
70	S. 49° 15′ W.	6.40	82	N. 37° 45′ W.	1.90
71	N. 73° 45′ W.	9.42	83	S. 89° 30′ W.	4.00
72	S. 69° 45′ W.	12.00	84	S. 60° 00′ W.	2.65
73	S. 32° 15′ W.	4.36	85	S. 84° 00′ W.	2.50
74	N. 89° 45′ W.	5.82	86	N. 70° 30′ W.	2.50
75	N. 45° 15′ W.	4.00	87	N. 61° 00′ W.	4.27
76	N. 64° 45′ W.	6.00	88	N. 54° 45′ W.	7.93
77	N. 55° 00′ W.	12.00	89	N. 46° 30′ W.	8.54
			90	N. 47° 45′ W.	12.46

(Observation near station 90, the principal stream bends to the left, its source being high up in the Sierra.)

The survey follows up a ravine, as follows:

91, N. 31° 00′ W., 4.85 chains.
92, N. 12° 45′ W., 9.75 "
93, N. 36° 30′ W., 6.30 "
94, N. 15° 30′ W., 12.40 "
95, N. 20° 06′ W., 7.79 " to a live-oak tree, which I have marked A, at the summit of the ridge connecting Mount Umunhum and the Mine ridge; thence descending said ridge, on its northern slope—

96, N. 9° 15′ E., 19.25 chains.
97, S. 85° 15′ E., 5.43 "
98, N. 13° 30′ E., 7.50 " to the bottom of a deep gorge; thence following down said gorge and the banks of a rivulet—

99, N. 37° 30′ W., 16.62 chains.
100, N. 62° 00′ W., 21.25 "
101, N. 85° 55′ W., 16.00 " to the junction of a large creek; thence down and along the banks of said creek—

Station.	True course.	Chains.	Station.	True course.	Chains.
102	N. 5° 45′ E.	6.85	118	N. 85° 30′ W.	5.33
103	N. 26° 30′ W.	5.25	119	N. 69° 15′ W.	23.00
104	N 13° 00′ W.	4.10	120	N. 10° 45′ E.	3.53
105	N. 3° 00′ W.	10.00	121	N. 39° 00′ W.	8.50
106	N. 26° 45′ W.	3.84	122	N. 68° 00′ W.	10.00
107	N. 8° 00′ W.	13.38	123	N. 44° 35′ W.	29 50
108	North.	4.15	124	N. 83° 45′ W.	13.00
109	N. 13° 30′ E.	11.00	125	N. 49° 30′ W.	16.75
110	N. 40° 15′ W.	8.18	126	N. 85° 45′ W.	6.82
111	N. 52° 15′ W.	19.70	127	N. 36° 15′ W.	5.00
112	N. 43° 15′ W.	8.59	128	N. 17° 00′ W.	8.00
113	N. 68° 15′ W.	7.00	129	N. 65° 45′ W.	2.95
114	N. 79° 00′ W.	6.60	130	N. 28° 30′ E.	7.00
115	N. 38° 45′ W.	15.68	131	N. 65° 15′ E.	21.00
116	N. 79° 15′ W.	7.93	132	N. 14° 30′ W.	6.00
117	N. 70° 00′ W.	22.00	133	N. 21° 45′ E.	4.53

to station 44 of the former survey; thence by the courses and distances of said survey along the northern base of the Mine Hill, from station 44 to station 64, the place of beginning; containing 4,504 acres. The whole tract bounded by the line running from the alder stump O, at the junction of the arroyo Seco with the arroyo de los Alamitos, by the eastern base of the Loma, to station 65; thence by the line surveyed to station 40, on the arroyo Seco, (at Augustin Narvas' eastern boundary;) thence by said arroyo Seco to its junction with the arroyo de los Capitancillos; thence up said arroyo to the alder stump at the mouth of the arroyo de los Alamitos; contains 8,033 acres, or $1\frac{85}{100}$ Mexican league of 4,340.277 acres. Surveyed December, 1854, and January and March, 1855.

Magnetic variation 15° 45′ east.

Depositions of H. C. Melone, W. C. Jones, A. Vestal, and W. R. Bethel, witnesses produced on behalf of the United States.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *April* 14, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Henry C. Melone, a witness produced on behalf of the United States, in case No. 142, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 744 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimants; the U. S. dist. att'y, by A. C. Peachy, esq.

Questions by the U. S. Dist. Att'y.

Ques. 1. Your name, age, and place of residence?

Ans. 1. Henry C. Melone; 50; Santa Clara county. I am a farmer at present.

Ques. 2. How long have you resided in Santa Clara county, in what parts of it, and what has been your occupation during your said residence?

Ans. 2. I have resided in Santa Clara county since September, 1849; up to October, 1853, I resided in the town of San José; since that I have resided on my farm, about 3 miles south of San José. In October, 1849, I was clerk of the court of first instance, and remained so until April, 1850; I was then elected county clerk, and held that office until October, 1853.

Ques. 3. Do you know James Alexander Forbes?

Ans. 3. I do.

Ques. 4. Do you know his handwriting?

Ans. 4. I do.

Ques. 5. Look at the signature to the deposition of Forbes, taken in the case of the United States vs. Chares Fossatt, No. 132, and state whether the signature is that of the Forbes whom you say you know.

Ans. 5. I believe it is.

Ques. 6. How far is the town of San José from Santa Clara?

Ans. 6. About 3 miles.

Ques. 7. Do you know James Alexander Forbes' general reputation among his neighbors?

Ans. 7. I do.

Ques. 8. What is that reputation for truth and veracity?

Ans. 8. It is bad.

(Question and answer objected to on the ground that it is wholly immaterial.)

Cross-examination.

Ques. 1. On what grant is your farm situated?

Ans. 1. On the Narvaez grant, on the ranch of San Juan Bautista.

Ques. 2. By what grant is the Narvaez grant bounded on the southeast?

Ans. 2. By the Justo Larios grant.

Ques. 3. Are you acquainted with the names of the hills and streams on the Justo Lorios grant.

Ans. 3. I have heard the names of all of them mentioned.

(Question and answer objected to.)

Ques. 4. Do you know the name of the stream which flows from the Sierra Azul, separates the Sierra Azul from the ridge in which the Guadalupe and San Antonio mines are situated, and divides the lands granted to Justo Larios and to Narvaez? If yes, what is its name?

(Question objected to.)

Ans. 4. I know the name of the creek. It is called Capitancillos.

Ques. 5. Do you know the ridge in which the New Almaden, San Antonio, and Guadalupe mines are situated?

Ans. 5. I do.

(Question and answer objected to.)

Ques. 6. Is that ridge part of the Sierra Azul, or is it a succession of lomas or hills, separated from the Sierra Azul by streams and valleys?

(Question objected to.)

Ans. 6. Well, I hardly know how to answer that question. It is a point of hills coming out of the Sierra, separated from it by a small creek, except at the headwaters.

(Answer objected to.)

Ques. 7. Did you ever hear of the ridge in which these mines are situated called "Sierra de Encinos?"

Ans. 7. I heard it called that in the trial between Berreyesa and the Almaden Mining Company, but prior to that never heard any name for it, except, in common conversation, they called it Lomas Hill.

(Answer objected to.)

Ques. 8. Would you believe Mr. Forbes on oath?

(Question objected to, as asking the witness's opinion.)

Ans. 8. I would not.

Ques. 9. What are your personal relations with Mr. Forbes—friendly or not?

Ans. 9. Friendly.

Ques. 10. Have you had any conversation with any one lately in regard to the reputation of Mr. Forbes?

Ans. 10. I have, with various persons, lately.

Ques. 11. With whom?

Ans. 11. I can't recollect all. I can tell a few. In the Peralta will case, which recently came up, I was summoned as a witness. The question of Mr. Forbes' testimony being admitted on this trial, a great many talked with me about it, in which his character for truth and veracity was freely spoken of. I talked with Lemuel Robinson, Isaac Branham; I think I talked with Mr. Vestal. The others probably I could not recollect at present, but I know there were a great many of them.

Ques. 12. Did you ever have any conversation on that subject with Mr. Blanding, the U. S. dist. att'y?

Ans. 12. I never did. I don't know him by sight.

Ques. 14. Do you know how you came to be subpœnaed to testify in this case?

Ans. 14. I do not.

Ques. 15. Have you been addressed upon this subject, or had any conversation about it recently with any person interested in or connected with the New Almaden Mining Company?

Ans. 15. I never spoke to one of them, to my knowledge; nor one of them ever spoke to me on the subject.

Ques. 16. Were you requested by any one to attend as a witness in this case?

Ans. 16. After I was subpœnaed I came into town to come down here, and there I met Mr. Campbell, who informed me that all the witnesses' fare was paid in the stages, and requested me, if I saw them, to tell them so.

Ques. 17. Was that all the conversation you had upon this subject with Mr. Campbell?

Ans. 17. Since I have been here he informed me what he expected to prove by me. Mr. Campbell being an attorney or agent for one of the parties, I have had conversations with him since I have been here, and he informed me what he expected to prove by me.

Ques. 18. What did he say that he expected to prove by you?

Ans. 18. He said they were going to impeach Mr. Forbes' testimony.

Ques 19. Who did he say was going to impeach Mr. Forbes' testimony?

Ans. 19. He did not inform me.

Ques. 20. Did you have any conversation with Mr. Campbell about paying your expenses as a witness?

Ans. 20. At the same time he informed me that our stage fare was paid he told me that our expenses would be paid also, and said he would give me a check if I wished it.

Ques. 21. Upon whom did he say he would give you a check?

Ans. 21. He did not say upon whom he would give it.

Ques. 22. Who is the Mr. Campbell of whom you speak?

Ans. 22. Mr. A. C. Campbell.

Ques. 23. What is his business or profession?

Ans. 23. He is an attorney at law.

Ques. 24. He is one of the attorneys of the New Almaden Mining Company, is he not?

(Att'y representing the U. S. dist. att'y states that he admits Mr. Campbell as being an attorney of the New Almaden Mining Co.)

H. C. MELONE.

Sworn to and subscribed before me this 14th April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Warren K. Bethel.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *April* 14, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., came Warren K. Bethel, a witness produced on behalf of the United States in case No. 142, being an appeal from the board of commissioners to ascertain and settle the private land claims in the state of California, in case No. 744 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y by A. C. Peachy, esq.

Questions by U. S. Dist. Att'y.

Ques. 1. Your name, age, and place of residence?

Ans. 1. W. K. Bethel; 34; Santa Clara county. I am a farmer.

Ques. 2. How long have you resided in Santa Clara county?

Ans. 2. Since December, 1850.

Ques. 3. Do you know the James Alexander Forbes concerning whom Mr. Melone and Mr. Vestal have just been testifying?

Ans. 3. I do.

Ques. 4. Do you know said Forbes' general reputation among his neighbors?

Ans. 4. I do.

Ques. 5. What is that reputation for truth and veracity?

Ans. 5. It is bad.

(Preceding question and answer objected to.)

Cross-examination.

Ques. 1. Judging from his general reputation, would you believe him on oath?

Ans. 1. I would not.

Ques. 2. What are your relations with Mr. Forbes—friendly or unfriendly?

Ans. 2. Friendly.

W. K. BETHELL.

Sworn to and subscribed before me, this 14 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Asa Vestal.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 14, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Asa Vestal, a witness produced on behalf of the United States in case No. 142, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 744 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y by A. C. Peachy, esq.

Questions by U. S. Dist. Att'y.

Ques. 1. Your name, age, and place of residence?

Ans. 1. Asa Vestal; 56; San Jose; I live within the city limits.

Ques. 2. How long have you resided in that county?

Ans. 2. Since the 6 August, 1850.

Ques. 3. Do you know the James Alexander Forbes concerning whom Mr. Melone has just testified?

Ans. 3. I do.

Ques. 4. Do you know Forbes' general reputation among his neighbors?

Ans. 4. Yes, pretty well.

Ques. 5. What is that reputation for truth and veracity?

Ans. 5. Well, sir, it is not good.

(Preceding question and answer objected to.)

Cross-examination.

Ques. 1. Judging from his general reputation, would you believe him on oath?

Ans. 1. I could not.

Ques. 2. What are the relations between yourself and Mr. Forbes—friendly or unfriendly?

Ans. 2. Friendly.

ASA VESTAL.

Subscribed and sworn to before me, this 14 April, 1857.
CUTLER McALLISTER,
U. S. Comm'r.

It is admitted.

Deposition of Wm. C. Jones.

United States District Court, northern district of California.
SAN FRANCISCO, *April* 14, 1857.

On this day, before Cutler McAllister, commissioner of the United States for the district of California, duly authorized to administer oaths, &c., came Wm. C. Jones, a witness produced on behalf of the U. S. in case No. 142, being an appeal from the board of land commissioners to ascertain and settle the private land claims in the State of California in case 744 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y by A. C. Peachy.

Questions by U. S. Dist. Att'y.

Ques. 1. Your name, age, and place of residence and occupation?

Ans. 1. Wm. C. Jones; 51; Santa Clara county; farming; I have resided in Santa Clara county since September, 1850.

Ques. 2. Do you know the James Alexander Forbes concerning whom Mr. Melone, Mr. Vestall and Mr. Bethel have testified?

Ans. 2. I do; I have resided within two hundred yards of him since September, 1850.

Ques. 3. Do you know said Forbes' general reputation among his neighbors?

Ans. 3. I do.

Ques. 4. What is that reputation for truth and veracity?

Ans. 4. It is bad.

(Preceding question and answer objected to.)

Cross-examination.

Ques. 1. Judging from his general reputation, would you believe him on oath?

Ans. 1. I would not.

Ques. 2. From your own knowledge of his character and dealings, would you believe him on oath?

(Question objected to as asking the witness's opinion.)

Ans. 2. I would not.

W. C. JONES.

Subscribed and sworn to before me, this 14 April, 1857.
CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed May 14, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Wm. L. Smith.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 15, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William L. Smith, a witness produced on behalf of the United States in case No. 142, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 744 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y by A. C. Peachy.

Questions by United States Dist. Att'y.

Ques. 1. Your name, age, and place of residence?

Ans. 1. William L. Smith; 55; the city of San José; I lived there since the fall of 1850; I am now engaged in ranching.

Ques. 2. Do you know James Alexander Forbes; where does he reside?

Ans. 2. I do; he resides in the county of Santa Clara, about two and a half or three miles from San José.

Ques. 3. Do you know Mr. Forbes' general reputation among his neighbors?

Ans. 3. I have heard it spoken of very generally since I have been there.

Ques. 4. What is that general reputation for truth and veracity?

Ans. 4. It is not favorable; generally it is not good.

Cross-examination.

Ques. 1. Judging from Mr. Forbes' general reputation, would you believe him on oath?

(Question objected to as asking the witness's opinion.)

Ans. 1. I don't think that I could.

Ques. 2. What are your relations with Mr. Forbes—friendly or unfriendly?

Ans. 2. There is no unfriendly feeling that I know of; perfectly courteous and respectful to each other.

WILLIAM L. SMITH.

Subscribed and sworn to before me, this 15 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Isaac Branham.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 15, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Isaac Branham, a witness produced on behalf of the United States, in case No. 142, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 744 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y by A. C. Peachy.

Questions by U. S. Dist. Att'y.

Ques. 1. Your name, age, residence, and occupation?

Ans. 1. Isaac Branham; 53; I live near San Jose; now I am a farmer.

Ques. 2. Are you acquainted with James Alexander Forbes, of Santa Clara?

I am.

Ques 3. Are you acquainted with his general reputation among his neighbors?

Ans. 3. I think I am acquainted with his general character.

Ques. 4. Are you acquainted with his general reputation in the community in which he lives?

Ans. 4. If you mean immediately around his house in the town of Santa Clara, I cannot say that I am. I know very few people in the town of Santa Clara. If the neighborhood was to embrace the town of San Jose and some miles around, and county around, why, I should say I was.

Ques. 5. What is that general reputation for truth and veracity?

Ans. 5. Bad, sir.

Cross-examination.

Ques. 1. How long have you resided in San Clara county?

Ans. 1. Since the fall of 1846—October or November, 1846.

Ques. 2. What do you mean by general reputation?

Ans. 2. I mean what I hear people generally talk about.

Ques. 3. What have you heard generally about Mr. Forbes as a man of truth and veracity?

Ans. 3. I have heard them make these remarks: "Is Forbes a witness? Well, they can prove what they want." Another: "Forbes has got a case on hand. Well, he can prove what he wants." Another: "I would not believe him on oath."

Ques. 4. Where is your farm?

Ans. 4. It is on a part of the Narvaez ranch.

Ques. 5. Do you know the rancho de los Capitancillos, and how far do you live from it?

Ans. 5. I do; I live about one mile and a half from the northerly boundary of it; that is what I have understood to be the boundary.

Ques. 6. Do. you know where the creek called Capitancillos is; if yea, where is it?

Ans. 6. I do; it is a part of the boundaries of the Capitancillos ranch.

(Question and answer objected to.)

Ques. 7. Describe how it runs.

(Question objected to.)

Ans. 7. It rises in what I have always understood to be the Blue mountains, and runs in a northerly direction until it gets nearly opposite the Almaden mine, making a short bend, running westerly until it passes what is called the Guadalupe line; there it a bend, and runs northeasterly until it enters the creek coming from the Almaden mines.

Ques. 8. Do you know the ridge on which the San Antonio, New Almaden and Guadalupe mines are situated?

Ans. 8. I know the ridge that it is on?

Ques. 9. Is that ridge part of the Sierra Azul, or is it a succession of lomas or hills, separated from the Sierra Azul by streams and valleys?

(Question objected to.)

Ans. 9. It is a ridge of low hills, separated from the main mountains by the creek Capitancillos, and a low depression in the ridge, or a small valley, quite a small valley.

Ques. 10. Did you ever hear of the ridge in which these mines are situated called the "Sierra de Encinos?"

Ans. 10. I have heard it here of late, but not formerly; it is not generally known as that.

(Question and answer objected to.)

Ques. 11. Has not that ridge of low hills been considered as a portion of the Capitancillos ranch since you have known it?

(Question objected to.)

Ans. 11. It has.

Ques. 12. Do you know on a ridge of the main Sierra a remarkably large tree? If yea, state if that tree was not formerly taken or considered as one of the limits of the pueblo lands.

(Question objected to.)

Ans. 12. I do. It was formerly so considered.

Ques. 13. What kind of a tree is it?

Ans. 13. It is a live-oak.

Ques. 14. Is it not visible at a great distance?

(Question objected to.)

Ans. It is on a clear day.

ISAAC BRANHAM.

Subscribed and sworn to before me, this 15 April, 1857.
CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed May 14th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Stipulation to admit all the Testimony taken in No. 132.

District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
THE GUADALUPE MINING COMPANY, Appellees. } No. 142.

It is stipulated that all the testimony taken and filed in case No. 132, The United States, Appellants, vs. Charles Fossat, Appellee, shall be considered as taken and filed in this case, subject to all objections and exceptions, as in case No. 132.

San Francisco, July 25, 1857.
P. DELLA TORRE, *U. S. Att'y.*
A. P. CRITTENDEN,
Att'y for Appellees.

Endorsed: Filed July 25, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Jose Noriega.

United States District Court, northern district of California.

SAN FRANCISCO, *September* 23*d*, 1856.

On this day, before George Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Jose Noriega, a witness produced on behalf of the claimant Charles Fossatt, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows; his evidence being interpreted by Eugene I. De Sunta Marina, a sworn interpreter.

Present, Wm. Blanding, esq., U. S. dist. att'y, on behalf of the U. S., and H. W. Halleck, esq., also on behalf of the U. S., and A. P. Crittenden, esq., att'y for claimants.

Questions by A. P. Crittenden, Esq., Att'y for Claimant.

Ques. 1. What is your name, age, and place of residence?

Ans. 1. My name is José Noriega; I am fifty-six years of age; and I reside in San José, California.

Ques. 2. How long have you lived there?

Ans. 2. I have lived there twenty-two years?

Ques. 3. Do you know the place called "Los Capitancillos," in the vicinity of San José, which was granted to Justo Larios?

Ans. 3. I do.

Ques. 4. In the vicinity of "Los Capitancillos," do you know any place called "Del Enciño?"

Ans. 4. I do not know such a place on the ranch; the place called "Del Enciño" is beyond the ranch of Justo Larios, on a hill called the "Blue hill."

Ques. 5. Is the Sierra Azul the same range in which the Almaden and Guadalupe mines are situated, or is it a different range?

(The attorney on behalf of the U. S. objects to the question as leading.)

Ans. 5. It is a different Sierra.

Ques. 6. Do you know what is the name of the range in which the Almaden and Guadalupe mines are situated? if yes, what is it called?

Ans. 6. I know the name of the range; the name is "Las Lomas Bajas de las Minas."

Ques. 7. Can you give a description of the place called "Del Encino?"

Ans. 7. It is on the side of the mountain, below the centre of the side, nearer the foot than the top of the mountain.

Ques. 8. Why is this place called "Del Encinos?"

Ans. 8. Because there is a large tree there, which is an encino.

Ques. 9. Is this place generally known by that name amongst the people of the country; if yes, for how long?

(The att'y on behalf of the U. S. objects to the form of the question, as leading.)

Ans. 9. It is well known to the inhabitants of the country by that name. I have known it ever since I have been in San José by that name.

Question 10. Did you ever hear "Las Lomas Bajas de las Minas" called the Sierra?

Ans. 10. I never did.

Cross-examination.—Questions by Attorney on behalf of the U. S.

Ques. 11. When did you first hear the name of Las Lomas Bajas de las Minas used?

Ans. 11. When the mines were first discovered; before that time they were known as "Las Lomas Bajas;" after the mines were discovered they were called "Las Lomas Bajas de las Minas."

Ques. 12. Who told you they were so called?

Ans. 12. No one particularly told me; all the world, or everybody, called them so.

Ques. 13. Who first gave the name "de las Minas" to the Lomas?

Ans. 13. I suppose the person who first discovered the mines

gave them the name. I am not able to say who first gave it to them.

Ques. 14. About what year, or how long ago, was this name given?

Ans. 14. Since the year 1845 or 1846, when the mines were discovered.

JOSÉ NORIEGA.

Sworn to and subscribed before me, this 23d day of September, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed October 3d, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of John La Croze.

United States District Court, northern district of California.

SAN FRANCISCO, *April 17th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John La Croze, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, esq., for claimants, and the U. S. dist. att'y, by A. C. Peachy.

Questions by Attorney for Claimants.

Ques. 1. Your name, age, and place of residence?

Ans. 1 John La Croze; 40; San Francisco.

Ques. 2. What is your profession?

Ans. 2. I am a United States deputy surveyor, at present.

Ques. 3. Did you ever make a survey of the rancho de los Capitancillos?

Ans. 3. Yes, sir.

Ques. 4. Please to examine the maps now shown you, marked J. M., and which is annexed to your deposition, and say what that map represents, and by whom is it made?

Ans. 4. This map is a correct copy of a map of a survey made by me of the rancho de los Capitancillos, and the three parts in which it is divided, the original of which is in the U. S. surveyor general's office. The original map was made by Mr. William G. Whitman, under my supervision, and who was in my employ at the time of making it.

Ques. 5. By what authority and under whose direction did you make that survey; and what papers or documents had you at the time, and when was the survey made?

Ans. 5. I made that survey by the authority and under the direction of J. C. Hays, U. S. surveyor general for California. I had at the time the decrees of confirmation of the board of the U. S. land commissioners, and translations of the original papers of the claims of the Guadalupe Mining Company and Charles Fossatt, certified to by the secretary of the U. S. board of land commissioners. This survey was made the latter part of December, 1854, and January, 1855.

Ques. 6. Did you have any other papers besides those you have mentioned?

Ans. 6. It does not occur to me at present; it is probable I may have had; it is probable that I may have had the expediente to the claim of Berreyesa.

Ques. 7. In what manner did the surveyor general direct how you were to make the survey?

Ans. 7. The surveyor general gave me verbal instructions on the ground, of the county that I was to embrace in my survey; this survey is made in accordance with those instructions.

Ques. 8. Please designate on the map the lines which represent thereon the boundaries of the land claimed by Charles Fossatt, as located by you.

Ans. 8. Commencing at corner C. C. No. 1; thence in a straight line to corner C. C. No. 2; thence following up a stream to corner C. C. No. 3, where the stream forks; and taking the northern branch, I continue up to the mouth of the cañon to station 15; thence up the cañon to a dividing ridge between stations 27 and 28, where I planted a stake; thence down a cañon, following the meanderings of the cañon to station 58; thence in a northeastwardly direction to station 59, which is a post on the bank of the arroyo Seco creek; thence up the meanderings of the said creek to the place of beginning; the boundaries above described being represented on this map by yellow lines.

Ques. 9. What quantity of land is included within the lines spoken of in your last answer?

Ans. 9. $5{,}691\frac{680}{1000}$ acres.

Ques. 10. Please designate in like manner the lines of this map which represent the boundaries of the land claimed by the Guadalupe Mining Company.

Ans. 10. Commencing at the corner marked G. M. No. 1; thence following the meandering of the arroyo Seco, to a corner marked G. M. No. 2, sycamore tree; from thence to station 56; from thence following the irregular red line from station to station to the station G. M. No. 1, or point of beginning; the boundaries of this tract being represented on the map in red lines, the station being marked in black ink.

Ques. 11. What quantity of land is embraced within the lines spoken of in your last answer?

Ans. 11. $833\frac{152}{1000}$ acres.

Ques. 12. What quantity of land is included within the boundaries of the rancho de los Capitancillos, as represented on that map, Exhibit "J. M?"

Ans. 12. $7.588\frac{906}{1000}$ acres.

Ques 13. What do the three tables which appear on this map show?

Ans. 13. The largest table shows the courses, stations, and distances of the exterior boundaries of the rancho de los Capitancillos; the next smaller table shows the stations, courses, and distances of $\frac{3}{4}$ of the rancho de los Capitancillos, confirmed to Charles Fossatt; and the smallest table shows the stations, courses, and distances of that portion of the rancho de los Capitancillos confirmed to the Guadalupe Mining Company.

Ques. 14. State specially in what manner the surveyor general gave you directions as to the location of the boundaries of the rancho de los Capitancillos.

Ans. 14. The surveyor general established a point at the junction of the arroyo Seco de los Capitancillos, and the arroyo de los Alamitos; thence in a straight line to a point at the foot of the low hill in the centre of cañada; thence in a straight line in a southerly direction to corner C. C. No. 2; these were the instructions I received from him.

Ques. 15. Was the southern line of the rancho de los Capitancillos as represented on this map located according to your own judgment, or in accordance with instructions from the surveyor general?

Ans. 15. Both in accordance with my own judgment and according to the instructions of the surveyor general, as I understood them.

Ques. 16. How did you ascertain the names given to the creeks upon this map?

Ans. 16. I got them from the expediente.

JNO. LA CROZE.

Subscribed and sworn to before me this 17 April, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

The foregoing deposition is taken, subject to all exceptions.

A. P. CRITTENDEN,
Att'y for Fossat.

Endorsed: Filed May 4th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

[*Here follows map marked "J. M.," referred to in John La Croze's deposition.—See original, page 327.*]

The whole of Los Capitancillos.

Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.
1	S. ° 3 E.	288.36	31	N. 30½ W.	10.24	61	N. 67½ W.	5.50	91	N. 52½ E.	8.46	121	S. ° 89 E.	6.70
2	N. 74¼ W.	1.89	32	N. 17 E.	4.01	62	N. 18¾ W.	9.76	92	N. 80 E.	1.95	122	S. 51 E.	9.75
3	N. 84 W.	14.50	33	N. 5½ E.	17.26	63	S. 88 W.	12.00	93	S. 74 E.	6.92	123	S. 54½ E.	11.50
4	S. 62⅜ W.	8.65	34	N. 37¾ W.	6.00	64	N. 53¼ W.	5.61	94	N. 74½ E.	7.12	124	S. 88 E.	8.52
5	N. 66½ W.	3.74	35	N. 0½ W.	7.08	65	N. 51½ W.	12.31	95	N. 43 E.	8.33	125	S. 65 E.	8.78
6	N. 78¼ W.	2.76	36	N. 37½ E.	7.86	66	West.....	7.04	96	N. 82½ E.	6.12	126	S. 5¼ W.	9.43
7	S. 80¼ W.	3.98	37	N. 18 W.	5.00	67	N. 49¼ W.	4.55	97	N. 89½ E.	6.23	127	S. 39⅝ E.	8.09
8	S. 76 W.	6.53	38	N. 45 W.	5.02	68	N. 16 W.	11.50	98	N. 70¼ E.	7.44	128	S. 56½ E.	3.26
9	S. 52½ W.	5.71	39	N. 54 W.	35.60	69	N. 16½ E.	3.27	99	N. 52½ E.	11.02	129	S. 81 E.	1.50
10	S. 9 W.	1.74	40	N. 80 W.	7.05	70	N. 37½ E.	5.74	100	N. 31 E.	6.90	130	S. 64¼ E.	12.40
11	N. 83 W.	5.88	41	N. 32¼ W.	10.13	71	N. 70½ E.	18.06	101	N. 52½ E.	7.82	131	S. 67½ E.	6.00
12	N. 1 E.	1.54	42	N. 54½ W.	6.50	72	N. 19 W.	4.50	102	N. 61¼ E.	7.50	132	S. 49 E.	5.48
13	N. 72½ W.	6.50	43	S. 87 W.	5.58	73	N. 44½ W.	4.52	103	N. 63½ E.	10.88	133	S. 59 E.	5.00
14	N. 60 W.	8.82	44	N. 54 W.	4.32	74	N. 47½ E.	7.23	104	N. 18¼ E.	8.80	134	N. 79 E.	6.04
15	N. 30 W.	4.56	45	N. 85¼ W.	8.50	75	N. 3 W.	3.86	105	N. 58½ E.	23.28	135	S. 74 E.	1.87
16	N. 1 E.	10.47	46	N. 39½ W.	6.59	76	N. 71 E.	6.87	106	N. 76 E.	14.76	136	S. 60¼ E.	5.04
17	N. 40⅝ E.	5.35	47	S. 81 W.	6.25	77	N. 30½ E.	5.15	107	N. 64 E.	10.17	137	S. 53¼ E.	3.82
18	N. 13 W.	5.09	48	N. 71½ W.	5.00	78	N. 0½ W.	2.55	108	S. 34 W.	6.50	138	S. 33 E.	2.78
19	N. 31 W.	2.47	49	N. 60½ W.	3.62	79	N. 23¾ E.	4.14	109	S. 20 E.	7.50	139	S. 89 E.	4.22
20	N. 11¼ W.	3.02	50	N. 83 W.	5.67	80	N. 30¾ E.	1.97	110	S. 62½ E.	4.70	140	S. 86½ E.	6.62
21	N. 19 W.	7.05	51	N. 59 W.	2.75	81	N. 1½ W.	4.36	111	S. 28 W.	5.40	141	S. 42 E.	16.10
22	N. 32 W.	3.71	52	N. 72½ W.	4.14	82	N. 20¾ W.	2.12	112	S. 30 E.	13.75	142	S. 28½ E.	9.54
23	N. 35½ W.	2.27	53	N. 59¼ W.	7.31	83	N. 50½ E.	3.40	113	S. 2 E.	5.00	143	S. 54¼ E.	3.31
24	N. 64 W.	3.88	54	N. 5⅞ E.	4.10	84	N. 67 E.	10.90	114	S. 25 E.	3.50	144	S. 57¼ E.	21.17
25	N. 71 W.	4.56	55	N. 35⅝ W.	4.04	85	N. 14¼ E.	4.64	115	S. 6¼ W.	8.00	145	N. 82¾ E.	3.83
26	N. 50 W.	4.10	56	N. 70 W.	4.45	86	N. 25⅞ W.	3.85	116	S. 19¼ W.	10.48	146	S. 65 E.	6.97
27	N. 31¼ W.	15.41	57	S. 88 W.	4.61	87	N. 12½ W.	8.41	117	S. 9 W.	4.23			
28	N. 48 W.	90.50	58	N. 46⅜ W.	6.50	88	N. 40 E.	12.15	118	S. 5¼ W.	13.82			
29	N. 83¾ W.	18.54	59	N. 64⅜ W.	6.00	89	N. 18 W.	4.53	119	S. 52 E.	5.50			
30	N. 12½ E.	6.64	60	N. 23½ W.	8.82	90	N. 32 E.	4.60	120	N. 74½ E.	5.77			

Containing 7,588$\frac{906}{1000}$ acres.

Charles Fossat's three-fourths.

Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.
	°			°			°			°	
1	S. 3. E.	288.36	23	N.35¼ W.	2.27	45	N.85½ W..	8.50	67	S. 81 E...	1.50
2	N.74¼ W.	1.89	24	N.64 W..	3.88	46	N.39½ W..	6.59	68	S. 64½ E.	12.40
3	N. 84 W.	14.50	25	N.71 W..	4.56	47	S. 81 W....	6.25	69	S. 67½ E.	6.00
4	S.62¾ W.	8.65	26	N.50 W..	4.10	48	N.71½ W..	5.00	70	S. 49 E..	5.48
5	N.66¼ W.	3.74	27	N.31½ W.	15.41	49	N.60½ W..	3.62	71	S. 59 E..	5.00
6	N.78¼ W.	2.76	28	N.48 W..	40.50	50	N. 83 W....	5.67	72	N. 79 E..	6.04
7	S.80½ W.	3.98	29	N.83¾ W.	18.54	51	N. 59 W....	2.75	73	S. 74 E..	1.87
8	S. 76 W.	6.53	30	N.12½ E..	6.64	52	N.72½ W..	4.14	74	S. 60½ E.	5.04
9	S.52½ W.	5.71	31	N.30½ W.	10.24	53	N.59½ W..	7.31	75	S. 53¼ E.	3.82
10	S. 9 W.	1.74	32	N. 17 E..	4.01	54	N. 5½ E...	4.10	76	S. 33 E.	2.78
11	N. 83 W.	5.88	33	N. 8½ E..	17.26	55	N.35¾ W..	4.04	77	S. 89 E.	4.22
12	N. 1 E...	1.54	34	N.37 W..	6.00	56	N. 70 W....	4.45	78	S. 86½ E.	6.52
13	N.72½ W.	6.50	35	N.0¼ W..	7.08	57	S. 88 W....	4.61	79	S. 42 E.	16.10
14	N. 60 W.	8.82	36	N. 37½ E.	7.86	58	N.45.31E.	191.86	80	S. 28½ E.	9.54
15	N. 30 W.	4.56	37	N.18 W..	5.00	59	S. 89 E....	2.54	81	S. 54½ E.	3.31
16	N. 1 E...	10.47	38	N.45 W..	5.02	60	S. 51 E....	9.75	82	S. 57¼ E.	21.17
17	N.40¾ E..	5.35	39	N.54 W..	35.00	61	S.54¼ E...	11.50	83	N. 82¾ E.	3.83
18	N.13 W..	5.09	40	N.80 W..	7.05	62	S. 88 E...	8.52	84	S. 65 E.	6.97
19	N. 31 W.	2.47	41	N.32½ W.	10.13	63	S. 65 E...	8.78	.....	.....	.....
20	N.11¼ W.	3.02	42	N.54½ W.	6.50	64	S. 5½ W..	9.43	.....	.....	.....
21	N. 19 W.	7.05	43	S. 87 W.	5.50	65	S. 39¾ E..	8.09	.....	.....	.....
22	N. 32 W.	3.71	44	N.54 W..	4.32	66	S. 56½ E..	3.26	.....	.....	.....

Containing 5,691$\frac{680}{1000}$ acres.

Guadalupe Mining Company.

Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.	Station.	Course.	Distance.
	°			°			°			°	
1	N. 46¾ W.	4.26	18	N. 3 W.	3.86	35	N.80 E.	1.95	52	S.20 E..	7.50
2	N. 64½ W.	6.00	19	N.71¼ E.	6.87	36	S.74 E.	6.92	53	S.62¾ E..	4.70
3	N. 23½ W.	8.82	20	N.30½ E.	5.15	37	N.74¼ E.	7.12	54	S.28 W.	4.75
4	N. 67¼ W.	5.50	21	N. 0¼ W.	2.55	38	N.43 E.	8.23	55	S.67 W.	12.69
5	N. 18¼ W.	9.76	22	N.23¼ E.	4.14	39	N.82½ E.	6.12	56	S.59 W.	12.32
6	S. 88 W.	12.00	23	N.30½ E.	1.97	40	N.89¼ E.	6.23	57	S.58 W.	5.59
7	N. 53¼ W.	5.61	24	N. 1½ W.	4.36	41	N.70¼ E.	7.44	58	S.47¾ W.	8.56
8	N. 51½ W.	12.31	25	N.20 W.	2.12	42	N.52½ E.	11.02	59	S.38¾ W.	12.50
9	West.....	7.04	26	N.50½ E.	3.40	43	N.31 E.	6.90	60	S.88¾ W.	13.14
10	N. 49¼ W.	4.55	27	N.67 E.	10.90	44	N.52¾ E.	7.82	61	S.18¾ W.	71.00
11	N. 16 W.	11.50	28	N.14¾ E.	4.64	45	N.61¾ E.	7.50	62	N.79 W.	21.20
12	N. 16¾ E..	3.27	29	N.25¼ W.	3.85	46	N.65¾ E.	10.88	63	S.78 W.	12.46
13	N. 37¼ E..	5.74	30	N.12¾ W.	8.41	47	N.18¼ E.	8.80	64	S.58¾ W.	38.72
14	N. 70¾ E..	18.06	31	N.40 E.	12.15	48	N.58½ E.	23.28	65	S.45½ W.	13.70
15	N. 19 W.	4.50	32	N.18 W.	4.53	49	N.76 E.	14.76	66	S.59½ E..	5.50
16	N. 44¼ W.	4.52	33	N.32 E.	4.60	50	N.64 E.	10.17	67	S.80 E..	39.70
17	N. 47½ E..	7.23	34	N.52¾ E.	8.46	51	S.34 W.	6.50	68	S.10 W..	56.10

Containing 833$\frac{152}{1000}$ acres.

I certify that this is a correct plat of a preliminary survey of a tract of land called "Los Capitancillos," as the same has been located by me, in accordance with the decrees of confirmation of the United States land commissioners to ascertain and settle the private land claims in California.

The whole area comprises $7{,}588\frac{906}{1000}$ acres, three-fourths of which have been confirmed to Charles Fossat. Another portion, by specific boundaries, has also been confirmed to the Guadalupe Mining Company, comprising $833\frac{152}{1000}$ acres, situated on the north-west portion of the said tract.

JOHN C. HAYS,
United States Surveyor General, California.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
San Francisco, California, January 23, 1855.

I certify this map to be a correct copy of the original now on file in this office.

JOHN C. HAYS,
United States Surveyor General, California.

UNITED STATES SURVEYOR GENERAL'S OFFICE,
San Francisco, California, April 4, 1856.

Deposition of Jas. Alex'r Forbes.

United States District Court, northern district of California.

SAN FRANCISCO, *March 17th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., came James Alexander Forbes, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, esq., for claimant, and the U. S. dist. att'y by A. C. Peachy, esq.

Questions by A. P. Crittenden for claimant.

Ques. 1. Your age and place of residence?

Ans. 1. I am 52 years of age; I reside at Santa Clara.

Ques. 2. How long have you resided in California, and where?

Ans. 2. Nearly 28 years, at the place which is now called the county of Santa Clara, nearly all the time.

Ques. 3. Do you know the tract of land called "Los Capitancillos," or rancho "Los Capitancillos;" if so, for how long have you known it?

Ans. 3. I have known the said tract about twenty-five years.

Ques. 4. Where is it situated?

Ans. 4. It is situated about 12 miles south of the town of Santa Clara, and about 9 or 10 miles nearly in the southerly direction from the town of San José.

Ques. 5. Do you know the names of the natural objects upon and in the vicinity of this tract of land? if yea, state how your information was acquired.

Ans. 5. If you mean by natural objects the topography of the country, I know the different ranges of mountains and hills, the valley of the Capitancillos and the adjoining streams upon the said tract; I derive my information from personal observation, and the names of those localities from the inhabitants of the country.

Witness examined as to his interest by U. S. Dis't Att'y.

Ques. 6. Have you any interest in the establishment of the claim in which you are giving your testimony?

Ans. 6. I have none.

Ques. 7. Have you no interest, direct or indirect, positive or contingent?

Ans. 7. I have none.

Here the examination is resumed.

Ques. 8. Do you know any object or place on this land or in its vicinity called "El Encino?"

(Question objected to, because if it is intended by asking that question to introduce testimony in regard to the boundaries of this rancho, such testimony is incomplete.)

Question withdrawn.

Ques. 9. Do you know any place on this land, or in its vicinity, called Sierra del Encino? if yes, state where it is.

(Objected to on the same ground as the former, and as being leading.)

Ans. 9. I know of a part of the range of mountains called the Blue mountains on the western part of the "Capitancillos," which is called "Sierra del Encino," from the fact of a large live-oak tree being situated upon a spur of that ridge of mountains, about one-third of the way down from the summit; that tree is the most prominent object there; it can be seen from the surrounding country fifteen or twenty miles off.

Ques. 10. You speak of the Blue mountains; by what name are the Blue mountains known amongst the people of the country?

Ans. 10. The whole ridge from a considerable distance to the southeast, towards Monterey, up to the west of Santa Clara, is called the Sierra Azul, and sometimes the Santa Cruz mountains.

Ques. 11. What is the Spanish name which you translate into Santa Cruz mountain?

Ans. 11. La Sierra de Santa Cruz, which is applied to that part of the range which I have designated farther north; it is called the Coast range.

Ques. 12. How is that portion of the Sierra Azul, or Sierra de Santa Cruz, which you say is known as the Sierra del Encino, situated in reference to this tract of land?

(The two preceding questions and the preceding answer objected to.)

The witness states that he does not understand the question and asks for an explanation; he wants to know if the question referred to the Sierra del Encino, or to the whole range of mountains.

Instruction. The question refers to the Sierra del Encino and its situation in reference to this tract of land.

(Instructions objected to.)

Ans. 12. It commences on the western side of the tract of the Capitancillos, on the western side of the creek of the same name, and runs up to the main ridge.

Ques. 13. Do you know where the arroyo de los Capitancillos is?

(Objected to.)

Ans. 13. I do.

Ques. 14. Please describe the face of the country that you pass in going from the arroyo de los Capitancillos to the foot of the Sierra del Encino?

Objected to.

Question withdrawn.

Ques. 15. Do you know where the road from the town of San José to the Almaden mines strike this tract of land, and over what portion of it this road passes?

Ans. 15. I do. That road strikes that tract of land near its northeast corner, and runs over it in a southeasterly direction.

Ques. 16. Are you sure it is the northeast corner?

Ans. 16. I do not mean to say it is the exact northeast corner, but it is the northerly part of the land; that is to say, near its northern limit—I should say, northwesterly limit.

Ques. 17. Describe the face of the country you pass over, starting from a point of this road a mile from where it strikes this land and going in a straight line to the foot of the Sierra del Encino.

(Objected to.)

Ans. 17. From that point designated the country is level up to the base of the low range of hills which lie to the east of the stream called the Capitancillos, and near to it, immediately after passing the said stream, commences the ascent of the Sierra del Encino.

(Answer objected to because it attempts to introduce testimony contradicting the calls of the grant and the map.)

Ques. 18. What range of low hills is it to which you refer in your last answer?

U. S. att'y asks for what purpose the foregoing question is propounded to the witness.

Att'y for claimant states that he is not under examination, and refuses to state the purpose for which this question is put to the witness.

(The question is then objected to on the ground that, if it is designed to prove the boundaries of the land claimed in this case, it is incompetent testimony.)

Ans. 18. It is that range of hills which lies to the eastward of the stream of the "Capitancillos," and in which are situated the quicksilver mines of Guadalupe and of the New Almaden. I say low hills, because from the northwestern part of that range of hills they run low until approaching the ascent to the hill in which the New Almaden mine is situated.

Ques. 19. What name does this range of hills bear in which are situated the New Almaden and Guadalupe mines?

(Question objected to on same grounds as before.)

U. S. att'y asks for the object in asking the question.

Att'y for claimant makes no answer.

Ans. 19. When I first knew that range it was designated as "La Cuchilla de la Mina de Louis Chabolla;" latterly it is known as the mining hills, or the hills of the mines.

Ques. 20. Did you ever hear it called amongst the people of the county by any other name?

(Question objected to on the same grounds.)

Ans. 20. I never have.

Ques. 21. Did you ever hear the name Sierra del Enciño applied to it?

(Objected to on the same grounds as before.)

Ans. 21. I never did.

Ques. 22. How long have you known the name of this range of hills?

(Objected to on the same grounds as before.)

Ans. 22. I cannot state the exact time, but I have known it a great many years.

Ques. 23. What were the sources of your information upon the subject?

(Objected to as before.)

Ans. 23. My communication with the people of the country, the inhabitants of San José, and the neighboring country.

Ques. 24. Do you speak the Spanish language? if yea, for how long have you spoken it?

Ans. 24. I do; I have spoken it for forty odd years.

Ques 25. Is this range of hills, on which the mines are situated, a part of the main Sierra, or Sierra Azul, or Sierra del Enciño?

(Objected to as before, and upon the additional ground that it is leading.)

Question withdrawn.

Ques 26. Please describe this range of hills in which the mines

are situated, and especially its situation in reference to the Sierra Azul and Sierra del Enciño.

(Objected to as before.)

Ans. 26. That range of hills is connected with the Sierra Azul on the south by a ridge that is depressed to the south of the mine of New Almaden, more west, perhaps, on its western side; the arroyo or stream of "Capitancillos" takes its rise, and running between the said range of hills and the Sierra del Enciño, running in a northwesterly direction, makes a bend towards the north and northeast at the northwestern extremity of that said range of hills on the eastern side of that spur, connecting said range with the Blue mountain; the arroyo or stream of Alamillos takes its rise, and, running in a northerly direction, bends towards the northwest, leaving the said range of hills on the west, and leaving the plain or valley of the "Capitancillos" intervening; the said stream joins the arroyo de Capitancillos below.

Ques. 27. What is the character of the country between the northern or northeastern base of this ridge in which the mines are situated, and the road which crosses this tract of land leading from San José to the Almaden mine? Is it plain, hill, or mountain?

(Objected to as before.)

Ans. 27. I have already stated that the road leading from San José to the mines is level, and that plain extends to that northeastern base of the said hills.

Ques. 28. Where is the best pasturage on this tract of land, on the plain or in the hills?

(Objected to.)

U. S. att'y requests the att'y for claimant to state the purpose for which the question is put; who answers, to show that Mr. Lewis, who was examined on behalf of the United States, was mistaken on this subject, and, by showing what the fact is, to repel the inference which might be attempted to be drawn from the testimony of Mr. Lewis on this subject; further, he says that he conceives it to be improper for the U. S. att'y to catechise him as to the intention with which he may ask any question, the object of this examination being to get facts from the witness, and not opinions as to law from the counsel.

Ans. 28. On the plain there is a tract on the northwest extremity of it, which affords good pasture; the remaining part of the plain is of a gravelly soil, whereon the grass grows scarcely; the hills on both sides produce grass abundantly, principally wild oats. I have seen hundreds of cattle on those hills, grazing there in the summer season, on both sides; and towards the ascent of the Sierra del Enciño I have also seen cattle grazing on the plain, but after the month of June, with the exception of that northern part, the grass dries up on the plain—more so than it does on the mountains.

Ques. 29. What kind of pasture is there on the southern side of this ridge between the Guadalupe and San Antonio mines?

(Objected to.)

Ans. 29. The pasturage there is good, down to the creek, and up the ascent of the Sierra, to a considerable distance, the pasturage is good. I have had horses and mules grazing there.

Ques. 30. What were your means of information on this subject?

Ans. 30. My own personal observation. I was residing there during the summer of 1848, working the mine of San Antonio, and both before and after that period I have been intimately acquainted with that country; I have passed and repassed over it a great many times.

Ques. 31. Please look at the diseño or map which forms a part of the expediente appearing in the transcript in this case, and say what stream designated thereon is the one which you call arroyo de los Alamellos, and what stream designated thereon is the one which you call arroyo de los Capitancillos?

(Objected to as incompetent to prove boundaries, if designed for that purpose.)

Ans. 31. The stream which is marked arroyo de los Capitancillos on this plan or map, *in* that which I have described as the arroyo de los Alamillos; that which is marked arroyo Seco on this plan, is a part of that which I have described as the arroyo de los Capitancillos.

Ques. 32. Which were the proper names of those streams, and the names by which they were generally known in the country, the names you have given them, or those by which they are designated on the diseño?

(Objected to on the ground the diseño being part of the grant, it is incompetent by parole testimony to change the calls of the grant and of the diseño.)

Ans. 32. I have always understood those streams to be known by the names which I have designated; below their confluence the stream takes another name, which is the arroyo de Abra.

Ques. 33. What is the meaning of arroyo Seco?

Ans. 33. Dry creek.

Ques. 34. Is there running water in the arroyo which you call arroyo de los Capitancillos, along its whole course, or is any portion of it; and if so, what portion dry?

(Objected to as irrelevant.)

Ans. 34. In the winter season there is water in its whole course; in the dry season the running water remains permanent until it turns below the Guadalupe mine, and there it sinks.

Ques. 35. Is there any arroyo or stream which is not laid down upon the diseño which empties into or joins the stream designated on the diseño as the arroyo de los Capitancillos? if yes, what is its

name, and where does it join said stream marked on the diseño arroyo de los Capitancillos?

(Objected to on the same ground as before.)

Ans. 35. There is; it is a small creek, which has water in the winter season; it runs in a northwesterly direction and joins this creek, marked on the diseño, near the house also designated on the diseño; it is called Dry creek, or arroyo Seco.

Ques. 36. On which side of the stream, marked on the diseño as arroyo de los Capitancillos, does this arroyo Seco lie; on the same side with the house, or on the opposite side?

Ans. 36. On the eastern or opposite side of the house.

Ques. 37. Where the water in a stream which has a name disappears, and below the point of its disappearance, the bed of the stream during the summer is dry, is it customary in the country to give to that portion of the bed where there is no water in the summer, any name different from the general name of the stream above; if so, what name?

(Objected to as irrelevant.)

Ans. 37. It is not customary to change the name. There are many streams in the country which run dry during the summer, and still retain their original name; if necessary, I can particularize some of them.

Ques. 38. In order to distinguish between those portions of the course of a stream where there is and is not water in the summer, how is it customary to designate them?

(Objected to as irrelevant.)

Ans. 38. I do not know that any particular designation is given to streams of that class, otherwise than by their respective names, except in the rainy season, or when they are inundated, when they are generally stated to be so.

Ques. 39. Opposite to what part or point of the range of hills in which are the New Almaden, San Antonio and Guadalupe mines, is the Sierra del Encino?

(Objected to.)

Ans. 39. It is opposite the western side of that range of hills.

Ques. 40. In what direction is the "Sierra del Encino" from the San Antonio mine?

(Objected to.)

Ans. 40. To the westward.

Ques. 41. And in what direction is it from the Guadalupe mine?

(Objected to.)

Ans. 41. To the south of west.

Ques. 42. Please look at the map marked No. 1, Exhibit "A. P. C." attached to the deposition of W. J. Lewis, on file in this case, and say whether or not in the answer you have given as to the direction of the Sierra del Encino and the San Antonio and Guadalupe mines, your ideas as to the points of the compass correspond

with those of the maker of that map, judging from the manner in which they are there laid down?

(Objected to.)

Ans. 42. I consider it to be correct; my answers agree substantially with the points as laid down in the map; when I have given bearings in my former answers, I did not mean to give the direction within a degree of the point designated; my means of knowledge are derived from my own observation of certain points many years ago—fully ten years ago.

Ques. 43. When you first knew this tract of land, the rancho de los Capitancillos, who lived upon it?

Ans. 43. A man by the name of Leandro Galindo.

Ques. 44. And after him, who?

Ans. 44. A man by the name of Justo Larios.

Ques. 45. What has become of Leandro Galindo?

Ans. 45. He is dead.

Cross-examination.—Questions by Att'y for the United States.

Ques. 46. Did you ever see the title-papers of Justo Larios to this tract of land?

Ans. 46. I do not recollect of having seen the original title-papers; I think I have seen a copy in the office of Mr. Peachy.

Ques. 47. Did you ever see a traced copy from the archives of the U. S. surveyor general for California, of the papers constituting the expediente, the application of Justo Larios to the governor of the department of Californias, for the tract of land claimed in this case; and if yea, if you saw in that document what purported to be a traced copy of Larios' petition to the governor for a grant of said land, of the diseño which accompanied the said petition, the governor's decree of concession for the same, and of the title of concession of the said land, made by the governor to the said Larios?

Ans. 47. I think that was the document which was shown to me in Mr. Peachy's office, alluded to in my preceding answer.

Ques. 48. Are you not a defendant in a suit in equity instituted in the circuit court of the United States for the districts of California in and for the northern district, the complaint wherein was filed on the 22d September, 1855, in which suit James Tobin et al. are complainants, and Robert Walkinshaw et als. are defendants, a copy of the complaint in which suit is now shown you, to enable you to identify the suit?

Ans. 48. I do not know that I am a defendant in said suit, having been improperly joined in that suit as a defendant, as it was proved on the trial that I had no interest therein. I do not know that I am a defendant; if I am, I am improperly joined. I alluded

to the suit at common law, bearing the same title, in the former part of this answer.

Ques. 49. Were you ever a defendant in the said suit in equity, and was any process in said suit served upon you?

Ans. 49. I have been made a defendant in suits in which James Tobin et als. were complainants, and I have had process served upon me, I think, twice.

Ques. 50. Did you ever make an answer to that suit in equity?

Ans. 50. I have answered by Mr. Peachy himself, he being counsel for all the defendants named in that case.

Ques. 51. Did you make oath to that answer?

Ans. 51. I did, to my knowledge and belief, or rather belief that the facts contained in that answer were correct.

Witness is shown the answer filed in the aforesaid equity suit, and asked:

Ques. 52. Was not the form of the oath you took in that case as follows:

UNITED STATES OF AMERICA,
State of California.

The defendants, James Alexander Forbes and Robert Walkinshaw, named in the foregoing answer, being duly sworn, severally depose and say, that they have read the foregoing answer and are acquainted with its contents, and that the same is true of their own knowledge, except as to the matters therein stated on their information and belief, and that as to those matters they believe it to be true.

Ans. 52. It was.

Ques. 53. By whom was that oath administered to you?

Ans. 53 By the officer of the United States court.

Ques. 54. Was not a part of the answer sworn to as above by you in the aforesaid case as follows:

§ 21. "And the said defendants further severally answering, say, that they have caused, at great expense, a very minute and accurate survey, both lineal and topographical, to be made of the said tract of land granted as aforesaid to the said Justo Larios, on the first day of August, A. D. 1842, and of the said tract of land alleged by the complainants in their said bills of complaint to have been granted by the said Governor Alvarado to the said José Reyes Berreyesa, on the 20th day of August, 1842, and of the country adjacent to the said ranchos, which survey was made by competent and skilful surveyors, and is a correct and true survey of the tract of land of which it purports to be made, and that they have further caused a map of the said survey in all respects, and truly describes and delineates the said country and the boundaries of the said ranchos, as they are given and described in the said grant to Justo Larios, and in the said alleged grant to José Reyes Berrey-

esa, and the said defendants herewith file a copy of the said map, marked Exhibit 'X,' which they pray may be considered part of their answer.

§ 22. "And the defendants further severally answering, say, that the tract of land on the said exhibit 'X,' delineated as follows—beginning at station O, at the junction of the arroyos Seco and Alamitos, and thence down the stream which, below said junction, is named on said map arroyo de los Capitancillos, to its junction with another arroyo, called arroyo Seco; thence up said last named arroyo to station No. 44; thence in straight lines from station to station consecutively to station No. 64; thence in a straight line to the starting point, (this last line closing the survey, and being drawn from the junction of the said arroyos Seco and Alamitos, southerly along the eastern base of the hill in the middle of the Cañada to the Sierra,) and containing one square league, less about 800 acres—is a true and correct survey of the rancho granted as aforesaid to the said Justo Larios, of the arroyo de los Capitancillos, and not the low hills lying to the north thereof is to be taken for such northern boundary of the said rancho; and that if the said low hills are to be taken for such northern boundary, it would make no difference whatever in said southern boundary, meaning from station No. 44 to station No. 64, and no difference in the direction of the eastern boundary line, meaning the line drawn from the the junction of the arroyos Seco and Alamitos, southerly by the eastern base of the hill in the middle of the Cañada to the Sierra, and no difference in the western boundary line of the said rancho, except to extend it from the junction of the arroyos Seco and Capitancillos at station No. 24, to the foot of said low Pueblo hills. And these defendants further say, that the title of the said Justo Larios does not name any northern boundary to the land granted, but that the map which accompanies his title lays down the Pueblo hills on the north of the said arroyo de los Capitancillos. And these defendants say that the land included in the said delineation of the said rancho of Justo Larios, with the additional strip of land added to the southern boundary thereof, described on Exhibit X, as contained between that portion of the southern boundary line which extends from station No. 47 at the point 'K,' thence along the stations consecutively to station No. 64, and from station No. 64 to the point 'I,' and from 'I' to 'J,' and from 'J' to 'K,' would contain one square league of land, the quantity granted as aforesaid to the said Justo Larios, and would include a portion of the Sierra, which, by the title and the accompanying maps of the said Justo Larios, is made the southern boundary of his rancho."

Ans. 54. According to the best of my knowledge and belief, it was.

It is agreed between the attorneys that the witness need only sign when he has finished his examination.

Examination adjourned until 10½ to-morrow.

SAN FRANCISCO, *March 18th*, 1857.

Present, A. P. Crittenden for claimants, and A. C. Peachy for U. S. dist. att'y.

Cross-examination of James Alexander Forbes, a witness produced on behalf of the claimants.

Continuation of the last answer:

Ans. 54. On the morning I signed this document I saw it at the office of Mr. Peachy in company with Mr. Walkinshaw. I looked over it, and more particularly that part of it which relates to the Berreyesa claim, or to the suit at bar at that time, and it having prepared by Mr. Peachy as principal counsel in the case, I considered it to be substantially correct, and with regard to that part of it which relates to the description of the land of Justo Larios, I did not pay particular attention to the phraseology of it, particularly in the 22d paragraph, in which it is stated, after describing the boundaries of that tract, that those boundaries would comprise a portion of the Sierra.

Ques. 55. Do you mean to say that that was the first time that you ever read that answer?

Ans. 55. I think it was the first time I ever read it complete in a printed form. I saw portions of it at Mr. Peachy's office before it was printed, but I never had a printed copy given to me as defendant—that is to say, to keep.

Ques. 56. Did you not read that answer as it was being printed, and as I received the sheets in my office?

Ans. 56. I did read a part of it in your office as they were being brought in from the printers and while you were correcting the proof, but I did not read the whole.

Ques. 57. Was not that answer read to you section by section by Mr. Peachy before it went to be printed, and were you not told by him that the anwer must be sworn to; and was not that answer prepared by him from facts stated to him by yourself; and did you not remain in San Francisco many days for the purpose of affording him materials, drawing an answer which was to be sworn to by yourself?

Ans. 57. A part of that answer was read in my presence, and to me by Mr. Peachy, when he was preparing it. I do not recollect that Mr. Peachy told me at that time that the answer must be sworn to. A part of that answer was certainly prepared by Mr. Peachy from facts stated by myself, which facts did not embrace the survey of the land of Justo Larios, as made by order of Mr. Peachy, nor with regard to quantities of land, more or less, as ex-

pressed in that answer. I cannot state what length of time I remained at that time in San Francisco for the purpose indicated in the question. I think I came from Santa Clara to San Francisco at the request of Mr. Peachy or the agents of the Almaden Company, I am not certain which, for the purpose of filing that answer with Mr. Walkinshaw; and upon the morning of filing it Mr. Walkinshaw and myself came with Mr. Peachy to the office of the U. S. commissioner to file it, when Mr. Peachy informed me it was necessary to file it under oath. I have already stated that we looked over it in the office of Mr. Peachy before coming down here.

Ques. 58. Do you mean to say, sir, that that was the first time you were made aware that that answer would be put in under oath, and did you not know during the whole course of the preparation of that answer that it would have to be sworn to, and were you not particularly made aware of that fact by Mr. Peachy when he was draughting that answer, and were not changes and modifications made in the rough draught of that answer in order that it might contain nothing but what you could swear to, either of your own knowledge or on your information and belief?

Ans. 58. That is what I mean to say. I did not know, during the whole course of the preparation of that answer, that it would have to be sworn to; my impression was that the document would be signed by Mr. Peachy, as attorney for the defendants. I do not recollect of having been informed otherwise until when so informed by Mr. Peachy about the time of the revision of the document when it was printed. Changes and modifications were made in that answer by Mr. Peachy, who solicited and received from me information in relation to the Berreyesa tract and other matters contained in the first part of the answer principally. I never gave Mr. Peachy any information in regard to the boundaries of the Justo Larios tract as laid down in the map filed with the answer.

Ques. 59. Did you not state in the presence of Antonio Suñol and José Fernandez, in the office of Messrs. Halleck, Peachy & Billings, some time in the month of December last, that the Almaden and Guadalupe mines were not situated in the limits of the rancho claimed in this case, but that the range of hills marked Sierra del Encino on the diseño accompanying and made part of the grant to Justo Larios, under whom the claimants in this case derive title, is the same range of hills in which the Almaden and Guadalupe mines are situated?

(The first part of this question objected to, as it asks merely whether or not the witness had expressed a certain opinion concerning a question of law.)

Ans. 59. I do not recollect of having stated particularly that fact upon that occasion. I recollect of having had conversations upon various occasions with Mr. Peachy as to whether the Justo

Larios tract would embrace the mine of Almaden. I did not state to Mr. Peachy that, according to the delineation of the range of hills on the diseño of Justo Larios, marked on that diseño as the Sierra del Encino, it appeared that they were meant for the first range of hills to the westward of the valley, and which I described yesterday in my direct examination. I stated upon that occasion to Mr. Peachy that that range of hills were not the Sierra del Encino.

(So much of the answer as pretends to state what the witness told Mr. Peachy objected to, on the ground that it is not an answer to the question, and upon the further ground that he is counsel for the company of New Almaden, whose claim to the mine and lands of New Almaden conflicts with the claim which is attempted to be set up in this case, and for that reason he does not desire to be made a witness in a matter relating to the interests of his clients, to contradict any alleged statements of conversations testified by the witness to have been held with him.)

Ques. 60. When did you obtain possession of the mine of San Antonio, of which you spoke yesterday?

Ans. 60. The first possession that I obtained of that so-called mine was in the spring of 1848, and after being ousted therefrom by a certain Mr. Taylor I took possession again, and retained the same several months.

Ques. 61. From whom did you derive your title to that mine?

Ans. 61. Upon the discovery of indications of cinnebar at that point I took possession of the spot where the vein was supposed to exist, and soon afterwards was notified to leave by Grove C. Cook, now deceased, he alleging that I was trespassing either upon his land, or land under his charge. I think *I think* he said it was his land; at all events he claimed a right to it. I then made an application to Charles White, who was at that time alcalde of the town of San Jose, to put me in possession of the land thereon to the extent of 200 varas by 800 varas.

Ques. 62. When you first took possession did you do so by virtue of any authority?

Ans. 62. I did not.

Ques. 63. Were you ever a part owner of the mine of New Almaden?

Ans. 63. I was.

Ques. 64. To what extent?

Ans. 64. $\frac{2}{24}$ths.

Ques. 65. Have you parted with your interest?

Ans. 65. I have.

Ques. 66. When did you part with your interest in it, and to whom?

Ans. 66. I think it was in 1850. I sold $\frac{1}{24}$ to Mr. John Parrott.

pressed in that answer. I cannot state what length of time I remained at that time in San Francisco for the purpose indicated in the question. I think I came from Santa Clara to San Francisco at the request of Mr. Peachy or the agents of the Almaden Company, I am not certain which, for the purpose of filing that answer with Mr. Walkinshaw; and upon the morning of filing it Mr. Walkinshaw and myself came with Mr. Peachy to the office of the U. S. commissioner to file it, when Mr. Peachy informed me it was necessary to file it under oath. I have already stated that we looked over it in the office of Mr. Peachy before coming down here.

Ques. 58. Do you mean to say, sir, that that was the first time you were made aware that that answer would be put in under oath, and did you not know during the whole course of the preparation of that answer that it would have to be sworn to, and were you not particularly made aware of that fact by Mr. Peachy when he was draughting that answer, and were not changes and modifications made in the rough draught of that answer in order that it might contain nothing but what you could swear to, either of your own knowledge or on your information and belief?

Ans. 58. That is what I mean to say. I did not know, during the whole course of the preparation of that answer, that it would have to be sworn to; my impression was that the document would be signed by Mr. Peachy, as attorney for the defendants. I do not recollect of having been informed otherwise until when so informed by Mr. Peachy about the time of the revision of the document when it was printed. Changes and modifications were made in that answer by Mr. Peachy, who solicited and received from me information in relation to the Berreyesa tract and other matters contained in the first part of the answer principally. I never gave Mr. Peachy any information in regard to the boundaries of the Justo Larios tract as laid down in the map filed with the answer.

Ques. 59. Did you not state in the presence of Antonio Suñol and José Fernandez, in the office of Messrs. Halleck, Peachy & Billings, some time in the month of December last, that the Almaden and Guadalupe mines were not situated in the limits of the rancho claimed in this case, but that the range of hills marked Sierra del Encino on the diseño accompanying and made part of the grant to Justo Larios, under whom the claimants in this case derive title, is the same range of hills in which the Almaden and Guadalupe mines are situated?

(The first part of this question objected to, as it asks merely whether or not the witness had expressed a certain opinion concerning a question of law.)

Ans. 59. I do not recollect of having stated particularly that fact upon that occasion. I recollect of having had conversations upon various occasions with Mr. Peachy as to whether the Justo

Larios tract would embrace the mine of Almaden. I did not state to Mr. Peachy that, according to the delineation of the range of hills on the diseño of Justo Larios, marked on that diseño as the Sierra del Encino, it appeared that they were meant for the first range of hills to the westward of the valley, and which I described yesterday in my direct examination. I stated upon that occasion to Mr. Peachy that that range of hills were not the Sierra del Encino.

(So much of the answer as pretends to state what the witness told Mr. Peachy objected to, on the ground that it is not an answer to the question, and upon the further ground that he is counsel for the company of New Almaden, whose claim to the mine and lands of New Almaden conflicts with the claim which is attempted to be set up in this case, and for that reason he does not desire to be made a witness in a matter relating to the interests of his clients, to contradict any alleged statements of conversations testified by the witness to have been held with him.)

Ques. 60. When did you obtain possession of the mine of San Antonio, of which you spoke yesterday?

Ans. 60. The first possession that I obtained of that so-called mine was in the spring of 1848, and after being ousted therefrom by a certain Mr. Taylor I took possession again, and retained the same several months.

Ques. 61. From whom did you derive your title to that mine?

Ans. 61. Upon the discovery of indications of cinnebar at that point I took possession of the spot where the vein was supposed to exist, and soon afterwards was notified to leave by Grove C. Cook, now deceased, he alleging that I was trespassing either upon his land, or land under his charge. I think *I think* he said it was his land; at all events he claimed a right to it. I then made an application to Charles White, who was at that time alcalde of the town of San Jose, to put me in possession of the land thereon to the extent of 200 varas by 800 varas.

Ques. 62. When you first took possession did you do so by virtue of any authority?

Ans. 62. I did not.

Ques. 63. Were you ever a part owner of the mine of New Almaden?

Ans. 63. I was.

Ques. 64. To what extent?

Ans. 64. $\frac{2}{24}$ths.

Ques. 65. Have you parted with your interest?

Ans. 65. I have.

Ques. 66. When did you part with your interest in it, and to whom?

Ans. 66. I think it was in 1850. I sold $\frac{1}{24}$ to Mr. John Parrott.

Ques. 67. With warranty, or without?

Ans. 67. With warranty.

Ques. 68. General, or special?

Ans. 68. I think my contract with him was general, with the exception of the United States. The other $\frac{1}{24}$ I sold to Wm. E. Barron on a quitclaim deed, I think in May, 1855.

Ques. 69. What did Mr. Parrott pay for the interest you sold him?

Ans. 69. My agreement with Mr. Parrott was for the sum of $24,000, upon credit of six, nine, and twelve months, in partial sums, with the privilege on his part to discount his notes.

Ques. 70. Did he pay you that money according to agreement?

Ans. 70. He paid me a part of it, and Bolton & Barron discounted his notes for the remainder.

Ques. 71. What did Wm. E. Barron pay you for the $\frac{1}{24}$ you sold him?

Ans. 71. $3,000.

Ques. 72. Have you received this money?

Ans. 72. I have.

Ques. 73. Have you taken any steps recently to procure a discharge from your liabilities under the insolvent law of this State? If yea, have you received a discharge?

(Objected to.)

Ans. 73. I refuse to answer, on the ground that Mr. Peachy has no right to examine me here as to the nature of my private affairs.

Ques. 74. The same question is propounded again to the witness.

(Objected to as irrelevant.)

Ans. 74. The same answer is given.

Examination adjourned until 11 o'clock a. m., March 19, 1857.

SAN FRANCISCO, *March 19th*, 1857.

Present, A. P. Crittenden for claimant, and A. C. Peachy for the U. S. dis't att'y.

Cross-examination of James Alexander Forbes, a witness produced on behalf of the claimant, continued.

Witness, under the advice of the counsel for the claimant: I wish to answer Mr. Peachy's last question, the question I refused to answer yesterday; and I answer to that, that I have taken the necessary steps for a discharge from my liabilities under the insolvent law of this State, and have received such discharge.

Ques. 75. When did you receive a discharge?

Ans. 75. I think the decree of the court was entered on the 12th day of December, A. D. 1856.

Ques. 76. Examine the map marked No. 1, Exhibit A. P. C., attached to deposition of W. J. Lewis, and state whether the same is not a copy of the map referred to in the 21st and 22d sections of your said answer, to which you were interrogated above, and especially whether that map is not a copy of the said Exhibit X referred to in your said answer, so far as it delineates and describes the tract of land which in the 22d section of your said answer you have described by reference to the said Exhibit "X."

Ans. 76. I am not able to state whether it is a copy or not. I have seen a number of maps of which this is a copy, and with regard to that map marked Exhibit "X" I do not recollect having remarked anything more particularly upon it than I do upon this. I never was present at any survey or measurement of land marked upon this map. I have already stated the manner in which I examined that answer on the morning of the day on which it was signed by me.

Ques. 77. Look at the tract of land delineated on said exhibit as follows: "beginning at station O, at the junction of the arroyo Seco and Alaimitos; thence down the arroyo marked on said map as arroyo de los Capitancillos, to its junction with another arroyo called the arroyo Seco on said exhibit, at station No. 24; thence up the last named arroyo to station No. 44; thence from station to station consecutively to station No. 64; thence to the point of beginning;" and also "to the strip of land included in the lines drawn from station 64 to I," and "from I to J, from J to K, at station 47, and thence from station to station consecutively to station 64," and state whether the land embraced in the first described lines is not the same tract of land referred to by you in the 22d section of your answer as having been granted by the governor of California to Justo Larios, and is not the tract of land contained within the last named lines the same as would be contained in that additional strip of land which in the latter part of the 22d section of said answer you state would include a portion of the Sierra, which by the title and accompanying maps of the said Justo Larios is made the southern boundary of his rancho.

(Question objected to on the ground that the interrogatory tends only to ascertain the opinion which the witness may have expressed heretofore in regard to the proper location to the grant to Justo Larios, which is a question of law.)

Ans. 77. I have already stated that I never was present at any survey of the land delineated on said map, and consequently I could not have known, except by information from others, of any quantity of land comprised within any given lines marked out upon the map; nevertheless, I was willing to believe that the different surveys made by Mr. Lewis, under the orders of Mr. Peachy, of the lands comprised in this map, were correctly made.

(Answer objected to as not being a response to the question.)

Answer continued.

And I do believe that the lands comprised in Mr. Peachy's interrogation do comprise the quantity of one league. with respect to the first lines mentioned, less the 800 acres expressed and the one league embraced within the latter lines expressed, but I cannot state that that western line runs up into the Sierra, or embraces a part of the Sierra, although it is so stated in the answer aforesaid, which fact I did not observe in my examination of the said answer at the time it was filed.

(Answer objected to as not responsive to the question.)

Witness states: I have read the question and do not perceive that I can give any other answer.

Ques. 78. Identify on this exhibit, if you can, station O, at the junction of the arroyos Seco and Alamitos, referred to in the 22d section of your said answer.

Ans. 78. I can identify it, and I do so; I identify the station expressed in the question as the point of junction of the two streams marked on this map and designated as the arroyos Seco and de los Alamitos.

Ques. 79. Identify, if you can, on this map, the line which in the 22d section of your said answer in chancery you describe as follows: "and thence down the stream, which below said junction is named on said map arroyo de los Capitancillos, to its junction with another arroyo, called arroyo Seco."

Ans. 79. I do identify it on this map—the line expressed in the question—as running down the stream marked upon this map as arroyo de los Capitancillos, from station to station, as marked upon this map, from Nos. 0 to 24, both inclusive, to its junction with another stream marked upon this map as arroyo Seco.

Ques. 80. Identify, if you can, upon this map, the lines or line in the 22d section of the said answer you describe as follows: "thence up said last named arroyo to station No. 44."

Ans. 80. I do identify the line expressed in the question, commencing at the aforesaid station No. 24, and following up the arroyo Seco from station to station, to station No. 44.

Ques. 81. Identify, if you can, on this map, the lines which in the 22d section of your said answer you describe as follows: "thence in straight lines from station to station, consecutively, to station No. 64."

Ans. 81. I do identify straight lines marked upon this map, numbered from No. 44, running along the northern base of the hills situated on the western side of the Cañada de los Capitancillos—perhaps it would have been more correct to have said northeastern base; but I do not identify these lines to embrace any part of the said hills, or of the Sierra; I am not able to state whether those lines on that map which are mentioned in the question are identical with those on the map.

Ques. 82. Define and describe, if you can, on this map, the lines referred to in the 22d section of your said answer in the following words: "thence in straight lines from station to station, consecutively, to station No. 64."

Ans. 82. I am not able to describe the lines expressed in the question, as set forth in the 22d paragraph of the answer, as I now observe those lines are stated in said answer to embrace a portion of the Sierra, while upon this map I see that they do not embrace a portion of the Sierra.

Ques. 83. In what part of said answer do you find it stated that the straight lines concerning which you were interrogated in the preceding question do embrace a portion of the Sierra?

Ans. 83. On examination of the 22d paragraph of the said answer now before me, I find that the lines said to include a portion of the Sierra are the lines delineated on the map southwestward and nearly parallel to the river expressed in the interrogatory, and which embrace a small portion of the ascent of the northeastern base of the hills situated on the southwestern side of the Cañadas de los Capitancillos; I do not know that I would be able to give a more direct answer.

Ques. 84. The lines referred to in the five preceding questions were intended to mean the lines including the tract of land referred to in the 22d section of your said answer, as being the tract granted to Justo Larios, and containing one square league, less about 800 acres; answer the preceding question with this explanation.

Ans. 84. In my answer, in which I stated that that line is stated in the said answer to embrace a portion of the Sierra, I was under the impression that it was stated in the said answer that those lines did embrace a portion of the Sierra, but on examination I find it is not so, but that those lines which I have designated as lying to the southwestward, parallel to those described in Mr. Peachy's question, are the lines stated in said answer to embrace a portion of the Sierra.

Ques. 85. Describe and define, if you can, on this map, the line referred to in the 22d section of your said answer, in the following words: "thence in a straight line to the starting point, this last line closing the survey, and being drawn from the junction of the said arroyos Seco and Alamitos southerly, along the eastern base of the hill in the middle of the Cañada, to the Sierra," and state, also, whether, finding yourself mistaken in supposing it to be stated in the 22d section of your said answer that the straight lines from station No. 44 to station No. 64 include a part of the Sierra, you cannot now describe and define the said lines on this map?

Ans. 85. I do recognise the line upon this map running from the junction of the two streams arroyos Seco and Alamitos southerly, by the eastern base of the hill, in the middle of the Cañada, towards the Sierra, as being the line described in the said answer,

the extent of which I cannot define. I can recognise the lines referred to in the question, as marked upon this map, as running in straight lines from 44 to 64, inclusive, but I distinctly declare that I never understood these lines, or any other lines embraced in the answer, to include any portion of the Sierra; those lines themselves will prove that such was the case—that they do not embrace any part of the Sierra.

(The last sentence of this answer is objected to by the U. S. dis't att'y upon the ground that it is not responsive to the question, and is a declaration volunteered by the witness.)

Ques. 86. Can you describe, define, or identify on this map the tract of land referred to in the last sentence of the 22d section of your said answer, in the words following: "and these defendants say that the land included in said delineation of the said rancho of Justo Larios, with the additional strip of land added to the southern boundary thereof, described on Exhibit X, as contained between that portion of the southern boundary line which extends from station No. 47, at the point 'K,' thence along the stations consecutively to station No. 64, and from station No. 64 to the point I, and from I to J, and from J to K."

Ans. 86. I cannot.

Ques. 87. Why, if you have been able to identify on this map the other lines referred to in the 22d section of your said answer, do you find it impossible to identify the lines of the additional strip referred to in the preceding question?

Ans. 87. Because, 1st, I am familiar with those lines which I have recognised, and which are properly stated in the said 22d paragraph of my said answer; and 2d, the lines defined upon this map are stated in that answer, incorrectly, to embrace a portion of the Sierra, and that not being the case in their extension and projection on this map, I cannot define their positions.

(That part of the answer which volunteers the statement contained in the second reason given by the witness for not being able to identify on this map the lines referred to in the 22d section of his answer, objected to.)

Ques. 88. Describe and define on this map, if you can, the additional strip of land referred to in the 22d section of your answer as containing about 800 acres, which, with the tract of land therein described by you as the land granted by the governor of California to Justo Larios, would contain one league square.

Ans. 88. I cannot describe that strip of land.

Ques. 89. Can you not say on which side of the tract of land you say was granted by the governor of California to Justo Larios their strip of land is located?

Ans. 89. If the land comprised in this map within the arroyos of Seco and Capitancillos, and the red lines marked upon this map, numbered from stations 44 to 64, and the line which is marked as

running from station 64 to the junction of the two creeks Seco and Alamitos, do not comprise the quantity of one square league, the quantity wanting must necessarily be taken from the southwestern side.

(Objected to, as not responsive to the question.)

The U. S. dist. att'y reiterates the question. Witness states the above is the only answer he can give.

Ques. 90. I did not ask your opinion as to the manner of making up the deficiency in the case you have supposed in your last answer; I asked you on which side of the tract of land which, in the 22d section of your said answer, you state to have been granted by the governor of California to Justo Larios, and defined therein particularly by metes and bounds, which said metes and bounds you have recognised and described on the map now before you, lies that additional strip of land, containing about 800 acres, which you have particularly described in the last sentence of the 22d section of your said answer.

(The last question, and the one preceding that, objected to, on the ground that they inquire concerning the present or former opinion of the witness in regard to the location of the land of Justo Larios, or concerning matters which are dependent on that opinion; and this last question is objected to on the further ground that it assumes that the witness has recognised and defined upon this map the boundaries of the land granted to Justo Larios, when there is no such recognition in any of the previous answers of the witness.)

Ans. 90. I have to state, in answer to the last question, that I never was present at any survey made of that tract, nor have I ever made any calculation of any quantity of land; but I was willing to admit the theory of Mr. Peachy with regard to the location of that land, as expressed in the 22d paragraph of the answer, and comprised within three known boundaries; and I now distinctly state, that I never read carefully the 22d paragraph of the answer—the setting forth all these boundaries and measurements of land was done by Mr. Peachy himself. On looking over carefully at this present examination that said paragraph, I find that the southwesterlymost lines marked upon this map do not embrace the Sierra, as incorrectly stated in the said answer. By reference to my previous answers to this examination, it will be found that I have not attempted to give a description of the boundaries of the tract of land of Justo Larios, nor have I given all those boundaries, as so stated by Mr. Peachy in his question.

(The entire answer objected to, as not responsive to the question, and consisting of volunteer statements.)

Ques. 90. Did you not, in the office of Messrs. Halleck, Peachy & Billings, some time in the month of December last, distinctly state, in the presence of Antonio Sunol, Jose Fernandez, and Antonio Maria Pico, that you had never heard of any Sierra called

the Sierra Encino; that there was a place on the Sierra Azul called El Encino, and that the range of hills in which the Almaden and Guadalupe mines are situated formed a part of the Sierra Azul?

Ans. 90. I did state, at the specified time, to Mr. Peachy, that that part of the Blue mountains or Sierra Azul, in the vicinity of the place where is situated a large oak tree, as described in my direct examination, was the Sierra del Encino; but I never did state that the hills in which the Almaden and Guadalupe mines are situated were a part of the Blue mountains. I have stated in my direct examination how those hills are connected with the Blue mountains.

(Entire answer objected to, as not being responsive to the question, and particularly to that portion of it which volunteers to relate a statement made by the witness to Mr. Peachy. This latter objection is upon the ground that Mr. Peachy being of counsel for the New Almaden Company, whose claim conflicts with that of the claimant in this case, as it is attempted to be established by the testimony of this witness, and being for that reason unwilling to give testimony in a matter affecting the interests of his clients, the respondents in this case would have no opportunity of proving the falsity of any such alleged statement.)

(Counsel for the claimant here suggests that he understands, from the answer as given to the witness, that the conversation referred to was in the presence of Sunol, Fernandez, and Pico; and objection being made to the answer as not responsive to the question, desires that the question be again read to the witness.)

(To this the U. S. dist. att'y objects, upon the ground that the statement of the counsel's understanding of that answer, made in the presence of the witness and within his hearing, has the effect of suggesting an answer to the witness.

Witness claims to have his answer read to him by the commissioner.

Ans. 90. The conversation referred to in my last answer was in the presence of those individuals, and they are all alive.

Examination adjourned until to-morrow, Friday, March 20, A. D. 1857.

SAN FRANCISCO, *March* 20, 1857.

Present, A. P. Crittenden, esq., on behalf of claimants, on account of the absence of Mr. Peachy, representative of the U. S. dist. att'y. Examination adjourned until Saturday, March 21, 1857.

SAN FRANCISCO, *March* 21, 1857.

Examination of James Alexander Forbes, a witness produced on behalf of the claimants, continued this day.

Present, A. P. Crittenden, esq., att'y for claimant; A. C. Peachy, esq., for U. S. dist. att'y.

Previous to the examination, the attorney for the claimant objects to the entering in this examination of the statements which in the form of objections to the answers of the witness have been made by Mr. Peachy in regard to facts, whether made explicitly or by implication, on the ground that Mr. Peachy is not under examination as a witness, and his declarations implying a contradiction of the witness, cannot be received; and the counsel for the claimant gives notice that at the proper time he will move the court to strike out all such statements.

Examination in chief resumed.

Ques. 1. In identifying the lines which you have been asked to identify by the attorney of the United States, do you mean to say that they are laid down on this map "No. 1, Exhibit A. P. C.," in the same manner as in the map "Exhibit X," to which your answer in chancery refers, or only that you find on *on* this map, "Exhibit A. P. C.," certain lines and points corresponding in number and designation with those referred to in your answer in the equity suit?

(Question objected to as being leading.)

Ans. 1. I think the limits identified by me upon the first-mentioned map are drawn similar to those alluded to in the last-mentioned map; but I cannot state positively whether they are so or not.

Ques. 2. Who told you that the lines designated in the 22d section of your answer in the equity suit, containing one square league—less about 800 acres—was a true and correct survey of the land granted to Justo Larios, or what information had you upon the subject?

(Objected to as leading.)

Ans. 2. I do not recollect that any person in particular informed me of the quantity of land comprised within those lines; all the information that I had upon that subject was derived from Mr. Peachy about the time of filing the above answer. He being attorney for the Almaden Company, I left the matter entirely to him, considering that the statement concerning those lines was not a matter of importance in that case or suit.

Ques. 3. If you had been aware that you were saying in the said 22d section of your answer, in effect that the mine range of hills was the same as the Sierra, and that the line across the foot of the mine range cut off part of the Sierra, would you have sworn to that statement?

(Objected to.)

Ans. 3. I do not know that I have stated in that answer that the Mine ridge is the same as the Sierra; but if I had known that in the said 22d paragraph it was stated that the one square league

alluded to comprises a portion of the Sierra, I should not have been willing to have deposed to it under oath.

Ques. 4. Please look at the map "No. 1, Exhibit A. P. C.," and say whether or not the lines designated on that map by numbers from 47 to 64, inclusive, from 64 to I, from I to J, from J to K 47, do or do not include any portion of the Sierra?

Ans. 4. They do not.

(Question objected to.)

Ques. 5. Does the point numbered 64, on this map, "Exhibit A. P. C.," correspond in position with the point designated by the same number on the map, "Exhibit X," referred to in the 22d section of your answer?

Answer 5. I think it does, but I would not be able to state positively.

Ques. 6. In the 22d section of your said answer, in designating the lines of the land granted to Justo Larios, you take station O as the starting point, and describe the last line as follows: starting from station No. 64; thence in a straight line to the starting point—this last line closing the survey, and being drawn from the junction from the said arroyos Seco and Alamitos, southerly, along the eastern base of the hill, in the middle of the Cañada to the Sierra. Now, if the point 64, on the map, "Exhibit A. P. C.," corresponds in position with the point having the same designation on map "Exhibit X," it would appear from this paragraph of your answer that you state the point 64 to be in or at the foot of the Sierra; is that the case?

(Question objected to.)

Answer 8. In my penultimate answer I state that none of the lines upon this map comprise the Sierra; and admitting that the lines and points upon this map are identical with those upon the map alluded to in the said paragraph of the said answer, then it follows that station 64 does not reach the foot of the Sierra.

Ques. 7. At or about what point on the map, "Exhibit A. P. C.," would a straight line, drawn from point O, at the junction of the arroyos Seco and Alamitos, southerly along the eastern base of the hill in the middle of the Cañada, strike the Sierra?

(Question objected to.)

Answer 7. It would strike it on station 65, which I see marked upon this map.

Ques. 8. Do you know under whose direction the map, "Exhibit X," referred to in your answer, and the survey on which it was founded, were made?

Ans. 8. I believe both were made under the direction of Mr. Peachy or Mr. Halleck.

Ques. 9. Do you know from whom Mr. Peachy or Mr. Halleck acted in having this survey and map made?

Ans. 9. For the New Almaden Mining Company; Mr. Halleck

is the managing director of the said mine, and Mr. Peachy is the principal attorney-at-law in California for that company.

Ques. 10. Since what time?

Ans. 10. Since 1850.

Ques. 11. You say that you have applied for and obtained your discharge, under the insolvent law of this State. Was your liability to Mr. John Parrott, upon your warranty of title to the share in the Alamaden mine, which you sold to him, included in your list of debts and liabilities from which you applied to be discharged?

Ans. 11. It was not.

Ques. 12. You say that you have no interest in the event of this action if it should prove that the Almaden mine was upon the land of Justo Larios, and the title of the share sold by you to Mr. Parrott should be thus defeated. Would it affect your liability upon your warranty, and in that event would you have any interest in the result of this action; and if so, what?

(Question objected to.)

Ans. 12. It would affect my liability towards Mr. Parrott, and my interest in this case would be adverse to myself.

Ques. 13. Under whom did Taylor claim the San Antonio mine?

Ans. 13. I think he stated to me that he claimed it under Grove C. Cook, or his assignees.

Ques. 14. In the conversation which took place in the office of Halleck, Peachy & Billings, and concerning which you have been interrogated, did you state in the presence of Antonio Suñol, José Fernandez and Antonio Maria Pico, that you had never heard of any Sierra called the Sierra del Enciño?

Ans. 14. I did not.

Ques. 15. Is the place called El Enciño, of which you have spoken, a place well known by that name to the people of the country?

(Question objected to as leading.)

Ans. 15. It is; it is the most prominent mark that was used in the extension of a line by the authorities of the pueblo of San José, which they ordered to be made some twenty years ago, running from a point near the mission of San José southerly to said Enciño, the Enciño being visible from the mission of San José.

Ques. 16. Are you a good Spanish scholar?

Ans. 16. I studied it in my early age; I have spoken it ever since, and I understand it as well as I do English.

Ques. 17. What is the meaning of Sierra de Enciños?

(Question objected to.)

Ans. 17. A serrated mountainous side, upon which are oak trees.

Ques. 18. Do you know any ridge in the vicinity on this land, which bears the name of Sierra de Enciños?

Ans. 18. I do not.

Ques. 19. Please examine the papers now shown you marked ("Exhibit Z. E.") C. Mico, and say whether or not you have ever seen the original of which that paper purports to be a copy, and whether or not it is a correct copy of the original; and if yea, how you know it to be so?

(Question objected to on the ground that objections will be made to any proof of a copy of an original, unless the original is produced before the commissioner, and also it is because it is examining the witness upon new matters after the examination in chief is closed.)

Ans. 19. I saw the original of this exhibit yesterday in the surveyor general's office, and, on examination, I found this to be a correct copy of the original; I compared them.

Ques. 20. Are you acquainted with the handwriting of the persons by whom these documents are signed, or of any and which of them?

(Objected to as before.)

Ans. 20. I am acquainted with the signatures of Echandia, Martinez, Pacheco and Victoria; I have seen them all write.

Ques. 21. Did you examine their signatures to the originals, of which this exhibit contains copies; and if yea, are those signatures genuine?

(Objected to as before.)

Ans. 21. I did, sir, and I believe them to be genuine.

Ques. 22. Do you know in whose handwriting is the petition signed Leandro Galindo, dated 6th June, 1828? if yea, state in whose.

(Objected to on same grounds as before.)

Ans. 22. I do know it is the handwriting of José Reyes Berreyesa.

Ques. 23. What office, if any, did Salvio Pacheco hold in June, 1828?

(Objected to as before.)

Ans. 23. I do not know.

Ques. 24. Who was comandante general and political chief of California in October, 1831?

(Objected to as before.)

Ans. 24. General Manuel Victoria; I knew him personally as such.

Ques. 25. Please to examine the exhibit now shown you marked "J. P. C. McA. E.," and say whether or not it is a correct translation of Exhibit E. P. McA. O.; if yea, how do you know it to be so?

(Objected to as before.)

Ans. 25. I have examined this exhibit now shown me; it is a correct translation into the English language of the exhibit marked "E. F. C. McA. E." I made it myself, and I have compared it with the original in the Spanish language, and find it to be correct.

Ques. 26. Did you ever have any conversations with José Reyes Berreyesa concerning a dispute between himself and Justo Larios, about the line of division between their two tracts of land; if yes, when did such conversations occur, and what was said by Berreyesa upon the subject?

(Objected to as before.)

Ans. 26. I have had a conversation with José R. Berreyesa, now deceased, in relation to a dispute he had about the line of division between their lands; I think this conversation took place in 1837 at his own house; Berreyesa told me that he had a dispute pending with regard to said line, and that Larios wished to claim up as far as the arroyo de los Alamitos; I never had any conversation with him after that time.

Attorney for claimant insists that this deposition be closed.

U. S. att'y claims the right to cross-examine.

Examination adjourned until Monday, March 23, 1857, at 11 a. m.

SAN FRANCISCO, *March* 23*d*, 1857.

Examination of J. A. Forbes, a witness produced on behalf of the claimants, this day resumed.

Present, A. P. Crittenden, esq., for claimant; A. C. Peachy for the U. S. dist. att'y.

Cross-examination resumed.

Ques. 1. You have stated that your interest is adverse to this claim. What was the value of your assets and the extent of your liabilities when you received your discharge in insolvency?

Ans. 1. Under the hypothesis assumed by Mr. Crittenden in the twelfth question of my direct examination resumed, I did state that the interest would be adverse to me; I cannot state the amount of liabilities nor of the assets expressed in my petition, as they were made up by my attorney from my accounts placed in his hands.

Examination concluded.

JAS. ALEX. FORBES.

Sworn to and subscribed before me, this 23d March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Exhibit "J. P."

4th Official Seal.

Provisionally authorized by the subaltern commissariat ad interim of the post of San Francisco, for the year 1828.

MARTINEZ.

ECHANDIA.

To the Constitutional Alcalde of the town of San José Guadalupe, Salbio Pacheco:

The citizen Leandro Galindo, an inhabitant of the said town of

San Jose, before your notorious justification, and with the greatest respect, presents himself and says, that having 250 head of horned cattle, 77 head of sheep, and a band of mares, and not having absolutely a place wherein to put them and hold them separate, in order in this manner and under my care to be able to augment them in a short time, I therefore hope that you may be pleased, by an effect of your bounty, to grant me the place of the Capitancillos, (that is, from the landmark Mojonera,) with all the Cañada which the Sierra makes, with the low hills. For as much to you I humbly supplicate that you may deign to look propitiously upon this my petition, for which I shall remain thankful.

Town of San José, 6th of June, 1828.

LEANDRO GALINDO.

TOWN OF SAN JOSE, *8th June*, 1828.

It being, as is understood, the order of his excellency the general, which treats of the matter in article 6, I grant the place that the party interested solicits.

PACHECO.

"*Exhibit J. P.*"

4th Official Seal.

Provisionally authorized by the principal provisional commissariat of Upper California, for the year 1831.

BANDINI.

VICTORIA.

To his Excellency the Commandant General and Political Chief of this Territory:

The citizen Leandro Galindo, an inhabitant of the town of San José Guadalupe, before your excellency, with due respect makes known, that in the year 1828 the alcalde of the said pueblo granted to him the place named the Capitancillos, that he might improve it, having the cattle necessary to obtain it, and considering that the document which he accompanies to your excellency is not a competent security, he humbly prays your excellency that, having in consideration the numerous family that surrounds him, and likewise the cattle, (being which he possesses,) you may be pleased to grant him the possession of the expressed.

Mission of Santa Clara, 15th August, 1831.

LEANDRO GALINDO, ⋈.

MONTEREY, *Oct.* 18, 1831.

Let the alcalde of the town of San José Guadalupe inform what is the distance between said pueblo and the place to which this petition refers.

VICTORIA.

In obedience with the superior decree, I say that although not

measured, the distance it is calculated *as* three to four leagues, under the knowledge of others who are in the same line.

Pueblo de San José de Guadalupe, Oct. 22, 1831.

LEANDRO FLORES, ⋈.

Exhibit "Z. E." C. Mico.

Sello 4o de Officio.

Habilitado provisionalmente por esta comisaria suo al terna interina del Pto. de Sn. Fran'co para el año de 1828.

MAXIMEZ.

ECHANDIA.

S'or Alcalde Const'l del Pueblo de S. José Guadalupe, Salbio Pach'o:

El ciud'o Leandro Galindo vecino del citado pueblo de S. José, ante la notaria justification de Vs. y con el mayor respeto se presenta y dice qe. teniendo 250 cabesas de ganado bacuno 77 cabesas ganado menor y una manado lleguas, y no teniendo absolutamente un parage donde colocarlos y tenerlos separados pa. qe. ce. estenido y cuide and poderlos aumentar en hebe tiempo por lo qe. espero se serva V. pl. mefecto on su vondad conseverme el parage de los Capitancillos (estres) desde la mojonera con toda la Cañada que hace la cuna con las lomas vajas. Por tanto—

A. V. rendedam'te suplico se digue vex propicia esta mi suplica de qe. le vivere reconocido.

Pueblo de S. José, 6 de Junio, de 1828.

LEANDRO GALINDO.

PUEBLO DE S. JOSE, *Junio* 8, *de* 1828.

Siendo como se entiende la orden del s'or gen'l qe. teata de la mairma en el asto. c. consede el parage qe. solicita al interesado.

PACHECO.

[Note by surveyor general.—The dotted lines show worn off edge in original.]

Sello Quarto de Officio.

Habilitado provicionalmente por la combsaria principal provicional de la Alta California, para el año de 1831.

BANDINI.

VICTORIA.

S'or Comand'te Gra'l y Gefe Politico de este Territorio:

El C. Leandro Galindo vecino del pueblo de Sr. José Guadalupe, ante V. S. con el seir de respeto haro presente qe. en el año de 1828, le concedis el alcalde del pueblo citado el parage nombrado los Capitancillos, pa. qe. lo formentara teniendo el ganado necesario pa. obtenerlo y conciderando qe. el docum. pue a V. S. acompana no es un resguardo conpetente suplica a V. S. rendidam'te

qe. teniendo a concediration la numerose familia qe. lo podea y pa. consig'te los bienes qe. pose se sirvua concederle la posecion del espresado.

Mission de S'ta Clara, 1o de Agosto, de 1831.

LEANDRO GALINDO, ⋈.

MONTEREY, *Oct.* 18, 1831.

Informe el alcalde del pueblo de S. José Guadalupe, cual es la distancia que media entrecho, pueblo y el para le a que se contral esta instancia.

VICTORIA.

En obed ciem'to de decreto sup'r sigo qe. aunque no medida la distancia se rigula de tres a quatro leguas bajo en conocim'to de otros qe. estaro en su rinsma linea.

Pueblo de S. José Guadalupe, Oct. 22, de 1831.

LEANDRO FLOXY, ⋈.

[Note by surveyor general.—The dotted lines show worn off edge of original.]

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody, a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two inclusive, exhibit a true and accurate copy of a certain document now on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the city
[SEAL.] San Francisco, this sixth day of September, 1855.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved 3d March, 1853.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general California, and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

Endorsed: Filed May 4th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify, that the writings annexed to this certificate (except the maps referred to) are full, true, and correct copies of their respective originals now on file, and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this 28th day of May, A. D. 1857.

[SEAL.]

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy Clerk.*

Deposition of Wm. M. Lent.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 23, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William M. Lent, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden for claim'ts; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Claim't.

First. What is your name, age, and place of residence?

Ans. William M. Lent; 38; I reside in Santa Clara.

Second. Do you know James Alexander Forbes, of Santa Clara? if yea, how long have you known him, and where?

Ans. I know him—I have known him in Santa Clara for the last three years.

Third. Do you know his general character among his neighbors in respect to truth and veracity? if yea, what is that character—good or bad?

Ans. I know his character for truth and veracity among his neighbors. It is good—none better.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. I believe at the request of Mr. Forbes.

Cross-examination.

Ques. 1. What portion of your time during the last three years have you spent in Santa Clara?

Ans. 1. A part of every fortnight, almost half the time I have lived there.

Direct Examination resumed.

Ques. 1. Where is your homestead?

Ans. 1. In Santa Clara.

WM. M. LENT.

Sworn to and subscribed before me this 23 April, 1857.

CUTLER McALLISTER,
U. S. Comm'er.

Deposition of John N. Hovey.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 22, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John N. Hovey, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, for claimants; the U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Claimant.

First. What is your name, age, and place of residence?

Ans. John N. Hovey; 40; I reside in Santa Clara for the last three years.

Second. Do you know James Alexander Forbes, of Santa Clara? if yes, how long have you known him, and where?

Ans. I know him—I have known him about three years in Santa Clara.

Third. Do you know his general character among his neighbors in respect to truth and veracity? if yea, what is that character—good or bad?

Ans. I never heard but what it was good. I never heard anything to the contrary.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking opinion of witness.)

Ans. I would.

Fifth. At whose request do you now attend as a witness in this case?

Ans. At Mr. Forbes'.

Cross-examination.

Ques. 1. What has been your acquaintance with Mr. Forbes' reputation among his neighbors?

Ans. 1. I think I know what his reputation is among his neighbors. I think it is good.

JOHN N. HOVEY.

Sworn to and subscribed before me this 22 April, 1857.

CUTLER McALLISTER,
U. S. Comm'er.

Deposition of Sam'l S. Johnson.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 22, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Samuel S. Johnson, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, for claimant; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Claim't.

First. What is your name, age, and place of residence?

Ans. Samuel S. Johnson; 33 years of age; I reside in Santa Clara.

Second. Do you know James Alexander Forbes, of Santa Clara? if yes, how long have you known him, and where?

Ans. I know James Alexander Forbes. I have known him in Santa Clara since January, 1851.

Third. Do you know his general character among his neighbors in respect to truth and veracity? if yea, what is that character—good or bad?

Ans. I think I do. I think that the preponderance is good; those on whom I rely most say so.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking the opinion of witness.)

Ans. I would.

Fifth. At whose request do you now attend as a witness in this case?

Ans. Mr. Forbes'.

Cross-examination.

S. S. JOHNSON.

Sworn to and subscribed before me this 22 April, 1857.

CUTLER McALLISTER,
U. S. Comm'er.

Deposition of Wm. T. Wallace.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 22, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came William T. Wallace, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. T. Crittenden, for claimants; U. S. district attorney by H. W. Halleck.

Questions by Att'y for Clm't.

First. What is your name, age, and placed of residence?

Ans. William T. Wallace; 29; I reside in San José.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I know him; I am well acquainted with him; I have known him for 6 years and more in Santa Clara county.

Third. Do you know his general character among his neighbors in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. I know his general character among his neighbors; it is good.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking opinion of witness.)

Ans. I would do so without any hesitation.

Fifth. At whose request do you now attend as a witness in this case?

Ans. I believe I attend at his request.

Ques. 6. What is your profession?

Ans. 6. I am a lawyer.

Ques. 7. Do you practice law in Santa Clara county? If so, since when?

Ans. 7. I do; I have practiced law since 1850.

Ques. 8. Do you hold any office under this State at present? If so, what?

Ans. 8. I do; attorney general of this State.

WILLIAM T. WALLACE.

Sworn to and subscribed before me, this 22 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed May 4th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of S. S. Barr.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came S. S. Barr, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden for claimant; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Clm't.

First. What is your name, age, and place of residence?

Ans. S. S. Barr; 49; Santa Clara.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I do; I have known him since 1849, at Santa Clara.

Third. Do you know his general character among his neighbors in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. I do; I have never heard anything stated against his truth or veracity in Santa Clara.

Fourth. From his general reputation, would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

S. STERRETT BARR.

Sworn to and subscribed before me, this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Peleg Rush.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Peleg Rush, a witness produced

on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden for claimants; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Claimants.

First. What is your name, age, and place of residence?

Ans. Peleg Rush; 61; I reside in Santa Clara.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I know him; I have known him since 1850; I knew him in Santa Clara.

Third. Do you know his general character among his neighbors, in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. I do. It is good for truth and veracity.

Fourth. From his general reputation, would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

PELEG RUSH.

Sworn to and subscribed before me, this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Jacob P. Leese.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Jacob P. Leese, as a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, for claimants; U. S. dist. att'y, by H. W. Halleck.

Questions by Att'y for Cl'mt.

First. What is your name, age, and place of residence?

Ans. Jacob P. Leese; 48; I reside at Monterey.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I know him; I have known him 21 years; I have known him in the vicinity of the Bay of San Francisco.

Third. Do you know his general character among his neighbors in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. I don't know his general character among his present neighbors, as I have not been acquainted with them for 10 years.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. I Would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

Cross-examination.

Ques. 1. Have you lived near Mr. Forbes at any time within the last six or seven years?

Ans. No nearer than Monterey, about 75 miles.

Direct Examination resumed.

Ques. 1. Did you know his character among his neighbors prior to the last 6 or 7 years?

(Question objected to.)

Ans. 1. I did.

Ques. 2. What was that character for truth and veracity?

Ans. 2. It was good.

(Answer objected to.)

J. P. LEESE.

Sworn to and subscribed before me, this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Isaac Graham.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Isaac Graham, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and tesfied as follows:

Present, A. P. Crittenden for claimants; U. S. dis't att'y by H. W. Halleck.

Questions by Att'y for Claimant.

First. What is your name, age, and place of residence?

Ans. Isaac Graham; I am nearly 57; I reside very near Santa Cruz.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I know James Alexander Forbes, of Santa Clara; I have known him 20 or 21 years; I have known him when he lived in the mission of San José; I was at his house there.

Third. Do you know his general character among his neighbors in respect to truth and varacity? If yea, what is that character—good or bad?

Ans. I am not much acquainted with his neighbors; I live 25 miles from where he lives; I never heard anything said against his character, as well as I recollect.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. Indeed I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

ISAAC GRAHAM.

Sworn to and subscribed before me, this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of Frank Lightston.

United States District Court, northern district of California.

San Francisco, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Frank Lightstone, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden for claimants, and the U. S. dis't att'y by H. W. Halleck.

Questions by Att'y for Cl'mt.

First. What is your name, age, and place of residence?

Ans. Frank Lightston; 35 years old; I reside in San Jose.

Second. Do you know James Alexander Forbes, of Santa Clara? If yea, how long have you known him, and where?

Ans. I do; I have known him since 1845; I knew him in Santa Clara.

Third. Do you know his general character among his neighbors in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. I know his general character privately to be good.

Fourth. From his general reputation would you believe him on oath?

(Question objected to, as asking the opinion of the witness.)

Ans. I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

Cross-examination.

Ques. 1. How long have you lived near Mr. Forbes?

Ans. 1. I have lived within 3 miles of Mr. Forbes since 1845.

Ques. 2. What has been your means of knowing among his neighbors?

Ans. 2. I have been so little among his near neighbors that I could not tell their opinion. I have stated my own opinion before that his reputation is good. I know that Mr. Forbes' character in San Jose, where I live, was always considered good.

Ques. 1. Are you able to state, from your acquaintance with his reputation among his neighbors, what that reputation is for truth and veracity?

Ans. 1. I think it must be good; I never heard any person say anything to the contrary.

FRANK LIGHTSTON.

Subscribed and sworn to before me this 21 April, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Deposition of Jacob R. Snyder.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Jacob R. Snyder, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, for cl'mts; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Claim't.

Ques. 1. Your name, age, and place of residence?

Ans. 1. Jacob R. Snyder; 45; San Francisco.

Ques. 2. Do you know James Alexander Forbes, of Santa Clara?

Ans. 2. I do.

Ques. 3. How long have you known him, and where?

Ans. 3. I have known him since 1845; first at San Francisco, and afterwards at Santa Clara.

Ques. 4. Do you know his general character among his neighbors in respect to truth and veracity? If yea, what is that character—good or bad?

Ans. 4. I know his character among his neighbors; it has always been good.

Ques. 5. From his general reputation, would you believe him on oath?

(Question objected to, on the ground that it is asking the witness's opinion.)

Ans. 5. I would.

Ques. 6. Are you acquainted with the claimant in this case, Charles Fossatt?

Ans. 6. I do not.

Ques. 7. At whose request do you now attend as a witness?

Ans. 7. At the request of Mr. Forbes.

Cross-examination.

Ques. 1. Did you ever live near Mr. Forbes? If so, when, where, and how long?

Ans. 1. I lived in this city when he was here in 1845; I was here at that time about two months, to the best of my recollection.

Ques. 2. Have you lived near him during the last six or seven years?

Ans. 2. I have not.

Ques. 3. Do you know what his reputation has been during that time among his neighbors?

Ans. 3. I could not say what it was during that time among his immediate neighbors; I have not lived in that section of the State.

Direct Examination resumed.

Ques. 1. During the last six or seven years how far have you resided from where Mr. Forbes resides?

Ans. 1. I have lived in San Francisco, and Mr. Forbes in Santa Clara, I presume about 45 or 50 miles distant from San Francisco.

Ques. 2. During this time have you been in the habit of seeing and conversing with persons from Santa Clara?

Ans. 2. I have at times.

J. R. SNYDER.

Sworn and subscribed before me this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r.

Deposition of H. F. Teschmaker

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Henry F. Teschmaker, a witness produced on behalf of the claimants in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, A. P. Crittenden, for claimants; U. S. dist. att'y by H. W. Halleck.

Questions by Att'y for Cl'mt.

First. What is your name, age, and place of residence?

Ans. 1. Henry F. Teschmaker; I am 34 years old; I reside in San Francisco.

Second. Do you know James Alexander Forbes, of Santa Clara? if yea, how long have you known him, and where?

Ans. I do; I have known him since 1843, I think.

Third. Do you know his general character among his neighbors in respect to truth and veracity? if yea, what is that character—good or bad?

Ans. I do; It is very good.

Fourth. From his general reputation, would you believe him on oath?

(Question objected to as asking witness's opinion.)

Ans. I would.

Fifth. At whose request do you now attend as a witness in this case?

Ans. Mr. Forbes' request.

Cross-examination.

Ques. 1. Did you ever live near him? if so, when, where, and how long?

Ans. 1. I have lived near him at times; not always during the period of my acquaintance with him. I was here several times when Mr. Forbes resided here in San Francisco—possibly 4 or 5 months; I was not strictly a resident then; I resided on shipboard; I was in the habit of seeing Mr. Forbes.

Ques. 2. Have you lived near him during the last 7 years?

Ans. 2. Not nearer than 50 miles.

Ques. 3. Do you know what his reputation has been during

that time among his neighbors? if yea, what for truth and veracity?

Ans. 3. Indirectly, I do; it is good; I never heard a word against Mr. Forbes.

Ques. 4. What has been your acquaintance with his reputation among his neighbors during the last 6 or 7 years?

Ans. 4. I have heard of it indirectly from those who have resided near him; I can't name now; that is my general impression. I wish to convey the impression on my mind that his character is good; I have never heard anything to the contrary.

H. F. TESCHEMAKER.

Sworn to and subscribed before me, this 21 April, 1857.

CUTLER McALLISTER,
U. S. Comm'r

Deposition of Sam'l J. Hensley.

United States District Court, northern district of California.

SAN FRANCISCO, *April* 21, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Samuel J. Hensley, a witness produced on behalf of the claimant in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden for claimants; U. S. dist. att'y by H. W. Halleck.

Questions by Claimant's Att'y.

First. What is your name, age, and place of residence?

Ans. Samuel J. Hensley; about 40; I reside in San José, in Santa Clara co.

Second. Do you know James Alexander Forbes, of Santa Clara? if yea, how long have you known him, and where?

Ans. I know James Alexander Forbes, of Santa Clara; I have known him since 1844; I have known him in this city, and where he resides, Santa Clara.

Third. Do you know his general character among his neighbors in respect to truth and veracity? if yea, what is that character—good or bad?

Ans. I have spent but little of my time in Santa Clara county; so far as I know, his general character is good.

Fourth. From his general reputation would you believe him on oath?

(Question objected to as asking the opinion of the witness.)

Ans. I would.

Fifth. At whose request do you attend as a witness in this case?

Ans. Mr. Forbes'.

Cross-examination.

Ques. 1. Have you lived near him in the last 5 or 6 years? if so, what portion of your time?

Ans. 1. I have resided in San José since 1851; Mr. Forbes has resided at Santa Clara, about 3 miles distant; during that time I have spent the greater portion of my time in San Francisco.

Ques. 2. Do you know what has been Mr. Forbes' reputation among his neighbors since 1851? if yea, what for truth and veracity?

Ans. 2. I have heard him spoken of both good and evil; as a general thing, for truth and veracity I have heard him favorably spoken of.

SAM'L J. HENSLEY.

Subscribed and sworn to before me this 21 April, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Endorsed: Filed July 25th, 1857.

JOHN A. MONROE, *Clerk.*

[*For map see original, page* 406.]

Deposition of Pedronilo Rios.

United States District Court, northern district of California.

THE UNITED STATES
vs.
CHARLES FOSSAT.

SAN FRANCISCO, *June 22d*, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Pedronilo Rios, a witness produced on behalf of the claimants, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by J. Edgar Grymes, by consent of respective attorneys.

Present, A. P. Crittenden for claimants, and U. S. att'y.

Questions by

1 ques. What is your name, age, and place of residence?

1 ans. My name is Pedronilo Rios; 51 years old; and I reside in the San Luis Obispo county.

2 ques. How long have you lived in California?

2 ans. I have lived here 33 years.

3 ques. Please examine the paper now shown to you, marked "P. R.," which will be attached to this deposition, and say whether or not it is a true copy of an original map or plan, and how do you know it to be a true copy?

(Question objected to, and also the introduction of this paper, as it does not purport to be an original, and the original is not accounted for.)

3 ans. I know it is a true copy of the original, because I compared it myself this very day.

4 ques. Where did you find the original to-day?

4 ans. In the surveyor general's office.

5 ques. Who made the original map or diseño of which this is a copy?

5 ans. I myself made it with my own hands.

6 ques. Where were you when you made it?

6 ans. In my own house in Monterey.

7 ques. For whom did you make it?

7 ans. For Justo Larios.

8 ques. Had you ever been upon the land of which you made the map or diseño?

8 ans. I have never been there before or since.

9 ques. Had you any knowledge yourself of the localities referred to, and the objects designated on that diseño?

9 ans. I had no knowledge whatever, except by seeing the Sierra passing on the road from Monterey to Santa Clara.

10 ques. Please to state how you made this diseño, having no knowledge yourself of the objects designated on it.

10 ans. I made it in conformity of Justo Larios' direction.

11 ques. How did Justo Larios give direction about the making of the diseño; was it by describing the hills and streams and other objects, or by showing you some other diseño by which you could copy?

(Question objected to as leading.)

11 ans. He gave me the idea verbally.

12 ques. The original diseño, which Exhibit "P. R." is a copy, was here produced from the office of the surveyor general, "Expediente No. 294," and witness is asked: "Is this original referred to in your preceding answer as having been made by yourself?

12 ans. It is the same.

(Objected to as irrelevant and incompetent.)

13 ques. Who wrote the words written on this diseño, "Sierra del Encino," "Arroyo Seco," "Arroyo de los Capitancillos," "Lindero de Sta. Clara," "Portezuello y lomas Bajas," "Corral Viejo del finado Macario," "Lindero del Sor. Berreyesa?"

13 Ans. I wrote them myself.

14 ques. Why did not Justo Larios make the diseño himself?

14 ans. Because he could not handle the pen.
No cross-examination.

PETRON'LO RIOS.

Sworn to and subscribed before me June 22d, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Endorsed: Filed July 25th, 1857.

JOHN A. MONROE, *Clerk.*

Deposition of John La Croze.

United States District Court, northern district of California.

SAN FRANCISCO, *July* 23, 1857.

On this day, before J. Edgar Grymes, a commissioner appointed for the northern district of California, duly authorized to administer oaths, &c., &c., came John La Croze, a witness produced on behalf of the claimant, in case No. 132, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 340 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, A. P. Crittenden, for claimant; P. Della Torre, U. S. dist. att'y.

Questions by Claimant's Att'y.

Question 1. What is your name, age, and place of residence?

Answer 1. John La Croze; 40 years of age; and reside in San Francisco, California.

Question 2. You have stated on a former examination in this case that you had made a survey of the rancho de los Capitancillos under the direction of the U. S. surveyor general for this State, and have filed a copy of the map made by you; have you a copy of the field-notes of that survey? If yea, please produce it, that it may be filed with your answer.

Answer 2. I have here a certified copy of said field-notes, certified by the said surveyor general.

(The witness here produces the paper referred to, which is marked by the commissioner "Exhibit No. 1," and is hereto attached, and made part of this deposition.)

Question 3. What do these field-notes show?

Answer 3. Those in the first part of the paper show the survey of the whole of the exterior boundaries of rancho of los Capitancillos. The next show the survey of three-fourths of the rancho of los Capitancillos, confirmed to Charles Fossat in this case. The next is a survey of a part of the rancho of los Capitancillos, confirmed to the Guadalupe Mining Company. These are the field-notes from which the map was made which accompanies my former deposition in this case.

JOHN LA CROZE.

Sworn to and subscribed before me July 23, 1857.

J. EDGAR GRYMES,
Special Commissioner.

Exhibit No. 1 *to Deposition of John La Croze.*

(No. 76.)

Field-notes of survey of Los Capitancillos, confirmed to Charles Fossat and to the Guadalupe Mining Company.

$7{,}588\frac{906}{1000}$ Acres.

Before entering upon this survey, I administered the oath required by the instructions of the surveyor general to the following assistants: To William Whitman, chainman; Hartly Lunham, chainman; Wilson H. Lunham, flagman; A. W. Peck, axeman.

JOHN LA CROZE, *D. S.*

Survey of the Mexican grant de los Capitancillos, confirmed to Charles Fossat, and to the Guadalupe Mining Company; surveyed under the immediate instructions of J. C. Hays, U. S. surveyor general of the State of California, who designated personally, on the ground, the points and boundaries included in the survey and location of this grant. Commenced survey Jan'y 1, 1855, at the point formed by the junction of two streams, called arroyo Seco and Alamitos, at a sycamore stump five feet in height and twelve inches in diameter, marked C. C. No. 1., and thence run:

(Variation of the needle N. 15 $\frac{3}{4}$ E.)

Sta.	Bearing.	Distance.	Remarks.
1	S. 3° E.	.....	From corner No. 1 offset to the right 1 chain, to avoid passing through the Alamitos creek, which at this time was swollen.
		15	Offset back 1 chain to true course.
		17.50	Cross the road from San José. Road runs S. 29° E. and N. 29° W.
		43	Five feet to the east of the line, the point established by J. C. Hays, U. S. surveyor general, as the eastern base of the hill in the centre of the valley, and to which reference is made in the decree of confirmation by the U. S. board of land commissioners as the eastern boundary of the grant. Planted a stake, marked C C.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
1	S. 30° E.	85.50	Line. Road runs S. 60 E. and N. 60 W.
		100	Edge of the valley. Commence to ascend the hills.
		123	Cross head of gulch. Gulch runs N. 64° E.
		134	Cross top of spur. Spur runs N. 64° E.
		135	Cross iron-wire fence. Fence runs N. 75° E. and S. 75° W.
		137.50	Cross head of gulch. Gulch runs N. 75° E.
		142.50	Cross the of the gulch.
		147.50	Top of spur or ridge.
		154	Head of gulch to the west. The line passes along the west side of the ridge.
		158.50	Enter chemizal brush.
		176.50	Cross ridge. Cañon 3 chains to the west of the line-heads, and runs N. 40° W.
		177.50	Line runs on the east side of ridge.
		180	Leave chemizal brush.
		181.50	Cross gulch that empties into a cañon to the east.
		185	Cross gulch.
		191.50	Cross spur. Runs S. 81° E.
		195	Cross gulch.
		204	Top of ridge.
		214	Cross small steep ravine.
		224.50	Cross cañon. Runs into the Alamitos creek.
		227.50	Cross road. Runs N. 85° E.
		229.50	Small gulch.
		248.50	Steep rocky bluff.
		256	Cross gulch; empties into the Alamitos creek.
			Cross gulch; empties same as last.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
1	S. 30° E.	288.36	To a forked sycamore tree, 24 inches diameter, with a birch tree entwined; both on the north bank of the Alamitos creek. The sycamore marked C. C. No. 2.
			Sycamore tree, 10 inches diam., bears N. 65° W. 1.02 links, marked C. x C.
			A leaning sycamore tree, 16 in. dia., bears N. 61° E., 52 links, marked C. x C.
			From thence traverse up the Alamitos creek.
2	N. 74¼ W.	1.89	
3	N. 84 W.	4.25	Cross creek.
		12.50	Re-cross creek.
		14.50	
4	S. 62¾ W.	8.65	
5	N. 66½ W.	3.74	
6	N. 78½ W.	2.76	
7	S. 80¼ W.	50	Cañon to the right.
		3.98	
8	S. 76° W.	3	Cañon to the right.
		6.53	
9	S. 59½ W.	5.71	
10	S. 9° W.	1.74	To a cluster of three birch trees at the forks of the Alamitos creek, one 18 inc. diam'r, marked C. C. No. 3. A sycamore tree 20 in. diam. bears N. 17½ W. 22 links, marked C. C. A birch tree 18 in. diam. bears N. 20° E. 26 links, marked C. C. Principal branch of the Alamitos heads south. Stream at the junction 20 links wide. Thence up the northwestern branch.
11	N. 83° W.	5.88	
12	N. 1° E.	1.54	
13	N. 72½ W.	5.50	Cross small ravine; heads it.
		6.50	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
14	N. 60° W.	30	Cross creek.
		8.82	Forks of the creek; thence up the northwestern branch or cañon.
			General course of the main fork N. 60° W.; heads in a high mountain.
15	N. 30° W.	1	Cross creek above the forks.
		4.56	
16	N. 1° E.	10.47	
17	N. 40¾ E.	5.35	
18	N. 13° W.	5.09	
19	N. 31° W.	2.47	
20	N. 11¼ W.	3.02	
21	N. 19° W.	7.05	
22	N. 32° W.	3.71	
23	N. 35½ W.	2.27	
24	N. 64° W.	3.88	Mouth of cañon; heads N. 30° E.
25	N. 71° W.	4.56	
26	N. 50° W.	4.10	
27	N. 31¼ W.	4	Head of cañon.
		6.80	Centre of the ridge that divides the waters of the Alamitos and Seco creeks; it being also the ridge that connects the front range of hills with the range of high blue mountains south. Planted a stake, marked C. C. line.
		8.50	Head of cañon.
		15.41	
28	N. 48° W.	6	Cross stream; stream to the right.
		15	Mouth of cañon; cañon heads S. 20° E.
		26.70	Mouth of cañon; heads N. 45° E.
		35.20	" gulch " N. 20° E.
		40	Re-cross creek.
		45	Cross gulch; heads N. 65° E.
			" stream; stream to right.
		52.50	Mouth of gulch; heads S. 45° W.
		56.50	Cross creek; creek to the left.
28	N. 48° W.	57.50	Recross creek. Creek to the right.
		70	Touch creek.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
28	N. 48° W.	74	Cross creek. Creek to the left.
		90.50	To an oak tree, 16 in. diam., marked
29	N. 83½ W.	1.50	C. C., and thence mouth of gulch—gulch heads N.
		11.50	Touch creek.
		17.50	Iron wire fence. Fence runs N. 43 E. and S. 43° W.
		18	Cross creek.
		18.54	Cross the Seco creek to a leaning sycamore tree 30 in. diam., marked C. C. No. 4. The tree 50 links west of the junction of the stream from the Cañon and the Seco creeks. The Seco creek 10 links wide—heads S. 30° W. and S. 50 W., branching a short distance above the junction. The iron fence runs up to the loftiest peak in this range of mountains, which peak is said to be 3,000 feet above the level of the valley. Thence run—
30	N. 12½ E.	1	Cross creek, near junction.
		6.64	Creek to the left.
31	N. 30½ W.	5	Large rock to the left.
		10.24	
32	N. 17° E.	4.01	
33	N. 8½ W.	10	Cross gulch. Gulch heads S. 80° E. Fine mineral spring, 125 links to the right.
		17.26	
34	N. 37½ W.	6	
35	N. ½ W.	7.08	
36	N. 37½ E.	2.50	Cross creek. Creek to the right. Mine worked formerly by Jno. Ricord and others, but now abandoned; 50 links to the left.
		7.86	
37	N. 18° W.	2	Cross creek. Creek to the left.
		5	
38	N. 45° W.	5.02	
39	N. 54° W.	25.33	Pyramid rock bears S. 50° W.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
39	N. 54 W.	27.50	Cross creek. Creek to right.
		34.50	" " " left.
		35	
40	N. 80° W.	7.05	Pyramid rock bears S. 17½ W.
41	N. 32½ W.	10.13	
42	N. 54½ W.	6.50	
43	S. 87° W.	5.50	
44	N. 54 W.	4.32	
45	N. 85½ W.	8.50	
46	N. 39½ W.	6.59	
47	S. 81 W.	6.25	
48	N. 71½ W.	5	
49	N. 60½ W.	3.62	
50	N. 83 W.	5.67	
51	N. 59 W.	2.75	
52	N. 72½ W.	4.14	
53	N. 59½ W.	7.31	
54	N. 5½ E.	4.10	
55	N. 35¾ W.	4.04	
56	N. 70 W.	4.45	
57	S. 88 W.	4.61	
58	N. 46¾ W.	6.50	
59	N. 64¾ W.	6	
60	N. 23½ W.	8.82	
61	N. 67½ W.	5.50	
62	N. 18¾ W.	9.76	
63	S. 88 W.	12	
64	N. 53½ W.	5.61	
65	N. 51½ W.	6.50	Cross creek. Creek to right.
		12.31	
66	West.	7.04	
67	N. 49½ W.	2.50	Cross mouth of cañon. Cañon heads S. 45° W.
68	N. 16 W.	5	Cross mouth of gulch.
		11.50	Gulch heads S. 82° W.
69	N. 16½ E.	3.27	Opposite this point the mountain is very abrupt and steep.
70	N. 37½ E.	5	Small ravine. Heads N.
		5.74	
71	N. 70½ E.	15.50	Recross creek. Creek to left.
		18.06	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
72	N. 19 W.	2.50	Site of the works of the Guadalupe Mining Company.
		4.50	
73	N. 44½ W.	4.52	
74	N. 47½ E.	7	Cross ravine from cañon.
		7.23	Cañon heads east.
75	N. 3 W.	3.80	
76	N. 71½ E.	6.87	
77	N. 30½ E.	5.15	
78	N. ½ W.	2.55	
79	N. 23½ E.	4.14	
80	N. 30½ E.	1.97	
81	N. 1½ W.	4.36	
82	N. 20½ W.	2.12	
83	N. 50½ E.	3.40	
84	N. 67 E.	6.50	Touch creek.
		10.90	House bears S. 22 W., 400 links.
85	N. 14½ E.	4.64	
86	N. 25½ W.	3.85	To a white oak tree, 40 in. diam., marked C. C. No. 5. An oak 40 in. diam. bears S. 27½ E., 2.65; an oak 30 in. diam. bears S. 68° E., 71.
87	N. 12½ W.	8.41	
88	N. 40 E.	2.15	
89	N. 18 W.	4.53	
90	N. 32 E.	4.60	
91	N. 52½ E.	8.46	
92	N. 80 E.	1.95	
93	S. 74 E.	6.92	
94	N. 74½ E.	7.12	
95	N. 43 E.	8.23	
96	N. 82½ E.	6.12	
97	N. 89½ E.	6.23	
98	N. 70½ E.	7.44	
99	N. 52½ E.	11.02	
100	N. 31 E.	6.90	
101	N. 52½ E.	7.82	
102	N. 61½ E.	7.50	
103	N. 63½ E.	10.88	
104	N. 18½ E.	8.80	
105	N. 58½ E.	23.28	
106	N. 76 E.	14.76	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
107	N. 64 E.	2.50	Cross road to San José.
		6	Witness tree, a sycamore, 10 in. diam., on the left of the line mkd. C. C. ☞, to the junction of the two Seco creeks, which makes corner No. 6.
			A cluster of four sycamore trees on 30 in. dia. bears S. 60½ E., 1.69 links, marked C. C., and thence up the Seco creek de los Capitancillos.
108	S. 34 W.	6.50	
109	S. 20 E.	7.50	
110	S. 62½ E.	4.70	
111	S. 28 W.	5.40	
112	S. 30 E.	13.75	
113	S. 2 E.	5	
114	S. 25 E.	3.50	Large hill west, 2.50 links.
115	S. 6½ W.	8	
116	S. 19¼ W.	10.48	
117	S. 9 W.	4.23	Point of rocks; large hill to right.
118	S. 5½ W.	2	House, 4 chains to the west.
		13.82	
119	S. 52 E.	5.50	House bears S. 46° E.
120	N. 74½ E.	5.77	Road along the line to the right.
121	S. 89 E.	6.70	House bears S. 30° W.
122	S. 51 E.	9.75	
123	S. 54½ E.	11.50	
124	S. 88 E.	8.52	
125	S. 65 E.	8.78	
126	S. 5½ W.	9.43	House bears S. 84½ W. 5 chains.
127	S. 39¾ E.	8.09	
128	S. 56½ E.	3.26	
129	S. 81 E.	25	Mouth of ravine 25 lks. wide,
		1.50	
130	S. 64½ E.	12.40	
131	S. 67½ E.	6	
132	S. 49 E.	5.48	House bears S. 81° W. 8 chains.
133	S. 59 E.	5	
134	N. 79 E.	6.04	
135	S. 74 E.	1.87	
136	S. 60½ E.	5.04	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
137	S. 53¼ E.	3.82	
138	S. 33 E.	2.78	
139	S. 89 E.	4.22	
140	S. 80½ E.	6.52	
141	S. 42 E.	2.60	House bears S. 68° W., improve't of Charles Fossat.
141	S. 42 E.	7.10	House bears N. 89½ W.
		10.10	1 " S. 51 W.
142	S. 28½ E.	8.18	1 " S. 89 W.
			2 " S. 57 W.
			3 " S. 28 W.
		9.54	
143	S. 54½ E.	3.31	2 " S. 82 W.
			3 " S. 58 W.
			4 " S. 33 W.
			5 " S. ½ W.
			6 " S. 1½ W.
144	S. 57½ E.	17.88	4 " S. 83 W.
			5 " S. 82 W.
			6 " S. 80 W.
		19	Old adobe house of Justo Larios 95 lks. to the right.
		21.17	
145	N. 82¾ E.	3.83	
146	S. 65 E.	5.70	Witness tree 5 links to the left of the line marked C. C. ☞.
		6.20	Witness tree, a sycamore marked C. C. ☞.
		6.97	To corner No. 1, at the junction of the Alamitos and Seco creeks. Survey closed January 10, 1855.
			NOTE.—The only connection that could be made with the public survey is for corner No. 5, S. 70 E. 56.90, S. 45° E. 70.03, east 10.83 to corner sections 20, 21, 28, & 29, T. 8 S., R. 1 E.

The area of the whole tract is 7,588$\frac{206}{1000}$ acres.

JNO. LA CROZE, *D. S.*

The greater portion, almost the whole of the land included in this survey, is fit only for grazing purposes. The plain at the foot of the hills is generally gravelly and of a very dry soil. The only good tillable land is a strip along the arroyo Seco in the vicinity of the improvements of Charles Fossat, and another running at the foot of the low hills towards the Puertozuelo, or gap in the range of low hills on the western part of the grant.

The plain is sparsely timbered, the principal growth being white oak, and along the course of the streams, sycamores.

The hills are partly covered with wild oats, and partly with scrub oak and chemisal brush.

JNO. LA CROZE, *D. S.*

Survey of the three-fourths of the Mexican grant of "Los Capitancillos," confirmed by the board of U. S. land commissioners to Charles Fossat.

Surveyed under the immediate instructions of J. C. Hays, U. S. surveyor general of the State of California, who designated personally on the ground the points and boundaries included in the survey and location of this grant. Commenced survey at the point formed by the junction of the two streams called arroyo Seco and Alamitos, at a sycamore stump five feet in height and 12 in. diam. Stump marked C. C. No. 1, and thence run:

(Variation of the needle N. 15 ¾ E.)

Sta.	Bearing.	Distance.	Remarks.
1	S. 3° E.	.....	From corner No. 1, offset to the right 1 chain to avoid passing through the Alamitos creek, which at this time is swollen.
		15	Offset back 1 chain to true course.
		17.50	Cross-road from San José. Road runs S. 29° E. and N. 29° W.
		43	Five feet east of the line, the point established by J. C. Hays, U. S. surveyor general, as the eastern base of the hill in the centre of the valley, and to which reference is made in the decree of confirmation by the board of U. S. commissioners, as the eastern boundary of the grant. Planted a post, marked C. C. Line.
		85.50	Road runs S. 60 E. and N. 60. W.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
1	S. 3° E.	100	Edge of valley—commence to ascend the hills.
		123	Cross head of gulch—gulch runs N. 64 E.
		134	Cross top of spur—spur runs N. 64 E.
		135	Cross iron wire fence—fence runs N. 75 E. and S. 75 W.
		137.50	Cross head of gulch—gulch runs N. 75 E.
		142.50	Top of spur or ridge.
		147.50	Head of gulch to the west.
		154	The lines passes along the west side of the ridge.
		158.50	Enter chemisal brush.
		176.50	Cross ridge. Cañon 3 chains to the west of the line; heads and runs N. 40 W.
		177.50	Line runs on the east side of the ridge.
		180	Leave chemisal brush.
		181.50	Cross gulch that empties into a cañon to the east.
		185	Cross gulch.
		191.50	Cross spur—runs S. 81 E.
		195	Cross gulch.
		204	Top of ridge.
		214	Cross small steep ravine.
		224.50	Cross cañon—runs into the Alamitos creek.
		227.50	Cross road—runs N. 85 E.
		229.50	Small gulch.
		248.50	Steep rocky bluff.
		256	Cross gulch—empties into the Alamitos creek.
			Cross gulch—empties same as the last.
		288.36	To a forked sycamore tree 24 inc. diam. with a birch tree entwined—both on the north bank of the Alamitos creek. The sycamore marked

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
			C. C. No. 2. A sycamore tree 10 in. dia. bears N. 65 W. 1.02, marked C. x C. A leaning sycamore tree 16 in. dia. bears N. 61 E. 52 links, marked C. x C. From thence traverse up the Alamitos creek.
2	N. 74½ W.	1.89	
3	N. 84 W.	4.25	Cross creek.
		12.50	Re-cross creek.
		14.50	
4	N. 62¾ W.	8.65	
5	N. 66½ W.	3.74	
6	N. 78¼ W.	2.76	
7	S. 80¼ W.	.50	Cañon to the right.
		3.98	
8	S. 76 W.	3	Cañon to the right.
		6.53	
9	S. 59½ W.	5.71	
10	S. 9 W.	1.74	To a cluster of three birch trees at the forks of the Alamitos creek, one 18 in. dia., mkd. C. C. No. 3. A sycamore tree 20 in. diam. bears N. 17 ½ W. 22 links, marked C. C. A birch tree 18 in. dia. bears N. 20 E. 26 links, marked C. C. Principal branch of the Alamitos heads south. Stream at the junction 20 links wide; thence up the northwestern branch.
11	N. 83 W.	5.88	
12	N. 1 E.	1.54	
13	N. 72½ W.	5.50	Cross small ravine—heads N.
		6.50	
14	N. 60 W.	.30	Cross creek.
		8.82	Forks of the creek; thence up the northwestern branch or cañon. General course of the main fork N. 60 W. heads in a high mountain.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
15	N. 30 W.	1	Cross creek above the forks.
		4.56	
16	N. 1 E.	10.47	
17	N. 40¾ E.	5.55	
18	N. 13 W.	5.09	
19	N. 31 W.	2.47	
20	N. 11¼ W.	3.02	
21	N. 19 W.	7.05	
22	N. 32 W.	3.71	
23	N. 35½ W.	2.27	
24	N. 64 W.	3.88	Mouth of cañon—heads N. 30 E.
25	N. 71 W.	4.56	
26	N. 50 W.	4.10	
27	N. 31¼ W.	4	Head of cañon.
			Centre of the ridge that divides the waters of the Alamitos and Seco creeks; it being also the ridge that connects the front range of hills with the range of high Blue mountains south.
		8.50	Planted a stake mkd. C. C. Line.
		15.41	Head of cañon.
28	N. 48 W.	6	Cross stream—stream to the right.
		15	Mouth of cañon—heads S. 20 E.
		26.70	" " " N. 45 E.
		35	" gulch " N. 20 E.
		40	Re-cross creek.
		45	Cross gulch—heads N. 65 E.
			" stream—stream to right.
28	N. 48 W.	52.50	Mouth of gulch—heads S. 45 W.
		56.50	Cross creek—creek to the left.
		57.50	Re-cross " " right.
		70	Touch creek.
		74	Cross creek—creek to the left.
		90.50	To an oak tree 16 in. diam., marked C. C.; and thence—
29	N. 83½ W.	1.50	Mouth of gulch—gulch heads N.
		11.50	Touch creek.
		17.50	Iron wire fence—fence runs N. 43°
		18	E. and S. 43° W.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
29	N. 83½ W.	.....	Cross creek.
		18.54	Cross the Seco creek to a leaning sycamore tree 30 in. diam., marked C. C. No. 4. The tree 50 links west of the junction of the stream from the cañon and the Seco creek. The Seco creek, 10 links wide, heads S. 30 W., and S. 50 W., branching a short distance above the junction. The iron fence runs up to the loftiest peak in the range of Blue mountains, which peak is said to be 3,000 feet above the level of the valley.
			Thence run—
30	N. 12½ E.	1	Cross creek near junction.
		6.64	Creek to the left.
31	N. 30½ W.	5	Large rock to the left.
31	N. 30½ W.	10.24	
32	N. 17 E.	4.01	
33	N. 8½ W.	10	Cross gulch—gulch heads S. 80 E. Fine mineral spring 1.25 links to the right.
		17.26	
34	N. 37½ W.	6	
35	N. ½ W.	7.08	
36	N. 37½ E.	2.50	Cross creek; creek to the right.
		5.50	Mine worked formerly by Jno. Ricord and others, but now abandoned;
		7.86	50 links to the left.
37	N. 18 W.	2	Cross creek; creek to the left.
		5	
38	N. 45 W.	5.02	
39	N. 54 W.	25.33	Pyramid rock bears S. 50° W.
		27.50	Cross creek; creek to the right.
		34.50	" " " " left.
		35	
40	N. 80 W.	7.05	Pyramid rock bears S. 17½ W.
41	N. 32½ W.	10.13	
42	N. 54½ W.	6.50	
43	S. 87 W.	5.50	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
44	N. 54 W.	4.32	
45	N. 85¼ W.	8.50	
46	N. 39½ W.	6.59	
47	S. 81 W.	6.25	
48	N. 71½ W.	5	
49	N. 60½ W.	3.62	
50	N. 83 W.	5.67	
51	N. 59 W.	2.75	
52	N. 72½ W.	4.14	
53	N. 59½ W.	7.31	
54	N. 5½ E.	4.10	
55	N. 35¾ W.	4.04	
56	N. 70 W.	4.45	
57	S. 88 W.	4.61	A post mkd. C. C. C. F. No. 1.
58	N. 45.31 E.	191.86	A post mkd. C. C. C. F. No. 2.
59	S. 89 E.	2.59	
60	S. 51 E.	9.75	
61	S. 54½ E.	11.50	
62	S. 88 E.	8.82	
63	S. 65 E.	8.78	
64	S. 5½ W.	9.43	House bears S. 30 W. 5 chains.
65	S. 39¾ E.	8.09	
66	S. 56½ E.	3.26	
67	S. 81 E.	.25	Mouth of ravine, 25 lks. wide.
		1.50	
68	S. 64¼ E.	12.40	
69	S. 67½ E.	6	
70	S. 49 E.	5.48	House bears S. 81 W. 8 chains.
71	S. 59 E.	5	
72	N. 79 E.	6.04	
73	S. 74 E.	1.87	
74	S. 60½ E.	5.04	
75	S. 53¼ E.	3.82	
76	S. 33 E.	2.78	
77	S. 89 E.	4.22	
78	S. 86½ E.	6.52	
79	S. 42 E.	2.60	House bears S. 68 W., improvements of Charles Fossat.
79	S. 42 E.	7.10	House bears N. 89¼ W.
		10.10	1st " S. 51 W.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
80	S. 28½ E.	8.10	1st bears S. 89 W.
			2d " S. 28 W.
		9.54	
81	S. 54½ E.	3.31	2d " S. 82 W.
			3d " S. 58 W.
			4th " S. 33 W.
			5th " S. ½ W.
			6th " S. 1½ W.
82	S. 57½ E.	17.88	4th " N. 83 W.
			5th " S. 82 W.
			6th " S. 80 W.
		19	Old adobe house of Justo Larios 95 links to the right.
		21.17	
83	N. 83¾ E.	3.83	
84	S. 65 E.	5.70	Witness tree 5 links to the left of the line marked C. C. ☞. Witness tree, a sycamore, marked C. C. ☞ To corner No. 1, at the junction of the Alamitos and Seco creeks. Survey closed Jan'y 10, '55.

The area of this tract of land is $5{,}691\frac{680}{1000}$ acres.

JNO. LA CROZE, *D. S.*

Survey of a part of the Mexican grant of Los Capitancillos, confirmed by the U. S. board of land commissioners, according to specific boundaries, to the Guadalupe Mining Company; surveyed according to the decree of confirmation, and under instructions from J. C. Hays, U. S. surveyor general of the State of California. Commenced January 1, 1855, at a mound of stones on the north bank of the Seco creek in the cañon, and thence down the meanders of the Seco creek.

(Variation of the needle N. 15¾ E.)

Sta.	Bearing.	Distance.	Remarks.
1	N. 46¾ W.	4.26	
2	N. 64¾ W.	6	
3	N. 22½ W.	8.82	

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
4	N. 67½ W.	5.50	
5	N. 18¾ W.	9.76	
6	S. 88 W.	12	
7	N. 53½ W.	5.61	
8	N. 51½ W.	6.50	Cross creek. Creek to the right.
		12.31	
9	West.	7.04	
10	N. 49½ W.	2.50	Cross mouth of cañon. Cañon heads S. 45 W.
		4.55	
11	N. 16 W.	5	Cross mouth of gulch. Gulch heads S. 82 W.
		11.50	
12	N. 16½ E.	3.27	Opposite this point the mountain is very abrupt and steep.
13	N. 37½ E.	5	Small ravine—heads N.
		5.74	
14	N. 70½ E.	15.50	Re-cross creek. Creek to the left.
		18.06	
15	N. 19 W.	2.50	Site of the works of the Guadalupe Mining Co.
		4.50	
16	N. 44½ W.	4.52	
17	N. 47½ E.	7	Cross ravine from cañon. Canon heads east.
		7.23	
18	N. 3 W.	3.86	
19	N. 71½ E.	6.87	
20	N. 30½ E.	5.15	
21	N. ½ W.	2.55	
22	N. 23½ E.	4.14	
23	N. 30½ E.	1.97	
24	N. 1½ W.	4.36	
25	N. 20½ W.	2.12	
26	N. 50½ E.	3.40	
27	N. 67 E.	6.50	Touch creek.
		10.90	House bears S. 22 W. 4.00 links.
28	N. 14½ E.	4.64	
29	N. 25½ W.	3.85	To a white-oak tree 40 inches diameter, marked C. C. No. 5.

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
			An oak 40 in. diam. bears S. 27½ E. 2.65. An oak 30 in. diam. bears S. 68 E. 71; creek 150 links to left.
30	N. 12½ W.	8.41	
31	N. 40 E.	12.15	
32	N. 18 W.	4.53	
33	N. 32 E.	4.60	
34	N. 52 E.	8.46	
35	N. 80 E.	1.95	
36	S. 74 E.	6.92	
37	N. 74¼ E.	7.12	
38	N. 43 E.	8.23	
39	N. 82½ E.	6.12	
40	N. 89½ E.	6.23	
41	N. 70¼ E.	7.44	
42	N. 52½ E.	11.02	
43	N. 31 E.	6.90	
44	N. 52½ E.	7.82	
45	N. 62½ E.	7.50	
46	N. 63½ E.	10.88	
47	N. 18¼ E.	8.80	
48	N. 58½ E.	23.28	
49	N. 76 E.	14.76	
50	N. 64 E.	2.50	Cross the road to San José.
		6	Witness tree, a sycamore on the left of the line mk'd C. C. ☞
		10.17	To the junction of the two Seco creeks which makes corner No. 6 of the whole grant of Los Capitancillos. A cluster of four sycamore trees, one 30 in. diam., bears S. 60½ E. 169 links, marked C. C., and thence up the Seco creek de los Capitancillos.
51	S. 34 W.	6.50	
52	S. 20 E.	7.50	
53	S. 62½ E.	4.70	
54	S. 28 W.	4.75	To corner, a post marked G. M. No. 2. 3 sycamores on a line bear N. 67° E.,

SURVEY—Continued.

Sta.	Bearing.	Distance.	Remarks.
			56 links, marked G. M., and thence across the low hills at the west end of the grant.
55	S. 67 W.	7.19	Road to San José.
		12.69	
56	S. 59 W.	12.32	
57	S. 38 W.	5.59	
58	S. 47¾ W.	8.56	
59	S. 38¾ W.	12.50	
60	S. 88¾ W.	13.14	
61	S. 18¾ W.	10	Chemisal brush.
		47	Leave chemisal brush.
		71	
62	N. 79 W.	21.20	To a stone mound.
63	S. 78 W.	12.46	" " "
64	S. 58¾ W.	38.72	" small oak sapling.
65	S. 45¾ W.	13.17	" stone mound.
66	S. 59½ E.	5.50	" white oak tree at the mouth of the cañon, and at the foot of the hill on the north side in which the Guadalupe mine is situated.
			Tree marked G. M. No. 3, a live-oak 20 in. diam., bears N. 20 E. 7.94.
67	S. 80 E.	39.70	To a stone mound.
68	S. 10 W.	56.10	To point of commencement, the line passing to the east of the mouth of the Guadalupe Mining Co.; tunnel at the distance of 400 yards.

Survey closed January 10, 1855.

JNO. LA CROZE, *D. S.*

This tract of land contains $833\frac{152}{1000}$ acres.

JNO. LA CROZE, *D. S.*

We hereby certify that we assisted John La Croze, deputy surveyor, in surveying the exterior boundaries of the Mexican grant of "Los Capitancillos," and the division lines of Guadalupe Mining Company, and that said grant and division lines have been in

all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the surveyor general.

_____, *Chainman.*
HARTLEY LANHAM, *Chainman.*
WILSON H. LANHAM, *Flagman.*
ABIAH W. PECK, *Axeman.*
_____, *Compassman.*

Subscribed and sworn to by the above, to wit: Hartley Lanham, Wilson H. Lanham, A. W. Peck, before me, a notary public for the county of Santa Clara, State of California, this 29th day of January, 1855, at said county, as witness my hand and notarial seal.

[SEAL.] L. AUCKERS,
Notary Public.

I, John La Croze, deputy surveyor, do solemnly swear, that in pursuance of instructions from J. C. Hays, surveyor of the public land of the United States in the State of California, that I have faithfully surveyed the exterior boundaries of the grant of "Los Capitancillos," confirmed to Charles Fossat, and the division lines of the portion confirmed to the Guadalupe Mining Company, and do further swear that the foregoing are the true and original notes of such surveys.

JNO. LA CROZE, *D. S.*

Subscribed by said John La Croze, deputy surveyor, and sworn to before me, a notary public for the county of San Francisco, State of California, this the 30th day of January, 1855.

[SEAL.] ARM. GUYOL,
Not. Pub.

I certify that the aforegoing are the correct field-notes of a preliminary survey of a tract of land called "Los Capitancillos," as the same has been located by me in accordance with the decrees of confirmation of the U. S. land commissioners to ascertain and settle the private land claims in California, and the documents referred to in the said decrees.

The whole tract comprises seven thousand five hundred and eighty-eight and $\frac{906}{1000}$ acres, (7,588 $\frac{906}{1000}$,) three-fourths of which have been confirmed to Charles Fossat. Another portion by specific boundaries has also been confirmed by the said commissioners to the Guadalupe Mining Company, comprising eight hundred and thirty-three and $\frac{152}{1000}$ acres, (833 $\frac{152}{1000}$,) situated on the northwestern portion of said tract. See map of the same.

U. S. surveyor general's office, San Francisco, Cal., Jan'y 23, 1855.

JOHN C. HAYS,
U. S. Sur. Gen. Cal'a.

I, John C. Hays, surveyor general of the United States for the State of California, do hereby certify that the foregoing exhibits a true copy of the field-notes of a preliminary survey of the tract of land named Los Capitancillos, confirmed to Charles Fossat and to the Guadalupe Mining Company by the U. S. land commissioners to ascertain and settle the private land claims in California, the original of which notes are on file in this office.

Given under my hand and official seal at the city of San Francisco, this 23d day of July, 1857.

[SEAL.]

JNO. C. HAYS,
U. S. Sur. Gen'l Cal'a.
By LEANDRO RANSOM,
Chief Clerk.

Endorsed: Filed July 23, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Admission of U. S. Dist. Att'y.

District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
CHARLES FOSSAT, Appellee.
} No. 132.

It is admitted that the signature of John C. Hays, U. S. sur. gen'l Cal., to the certificate dated April 4, 1856, appearing upon the map marked Exhibit "J. M.," attached to deposition of John La Croze, given in evidence in this case, is the genuine signature of John C. Hays, U. S. surveyor gen'l for the State of California.

San Francisco, July 25, 1857.

P. DELLA TORRE,
U. S. Att'y.

Endorsed: Filed July 25, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Certified copy of grant to Jose Reyes Berreyesa, and Stipulation.

Sello Primero—Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey, para los años de 1842 y 1843.

ANTONIO MA. OSIO.

ALVARADO.

{Ad'a Mari'ma de Mont'y. Eagle.} Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias:

Por cuanto el ciudadano José Reyes Berreyesa, pe pretendido para su beneficio personal, y el de su familia, el terreno conocido con el nombre de Cañada de los Capitancillos, colindante al norte con los Lomonas Bajas, inmediata al plan del pueblo de San José,

al sur con la Sierra, al oriente con las Lomenas del Laurel, y al Poniente con el rancho del ciudadano Justo Larios, el cual tiene por lindero, el angulo que forma el arroyo Seco y el de los Alamitos, rumbo al sur la falda de la loma cituada al centro de la Cañada osia el este, y hasta llegar a la Sierra; practicadas previamente las diligencias y aberiguaciones consernientes segun lo dispuesto por leyes y reglamentos. Usando de las facultades que me son conferidas a nombre de la nacion Mejicano, he benido en concederle el terreno mencionado, declarandole el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugetandose a la aprobacion de la ex'ma junta departamental, y baja las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las trabesias caminos, y servidumbres; lo disfrutara libre y esclusivamente, destenandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos, en cuyos limites, pondra a mas de las mojoneras, algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion, es de un sitio de ganado mayor, segun esplica el diseño, que corre en el espediente. El juez que diere la posecion lo hara medir, conforme a ordinanza quedando el sobrante que resulte a la nacion para los usos convenientes.

4a. Si contraviniere a estas condiciones, perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y baledoro el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a veinte de Agosto de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acuentes sobre adjudicacion de terrenos baldios a fe gle. 15.

JIMENO.

El ex'ma Señor gobernador ha dispuesto se tome razon de este concesion en la prefectura del 1a distritos 15.

JIMENO.

Tomese razon:

ESTRADA.

Queda tomada razon de este sup'r titulo en el conderse respectivo de esta oficina de mi cargo en la foja 8 frento.

Monterey, Sep're 22 de 1842.

JOSÉ MARIA CASTANARES,
S'rio Mo'r.

Endorsed: It is admitted that the within is a true and correct copy of the original grant to José Reyes Berreyesa, and that the signatures thereto are genuine.

San Francisco, August 12, 1857.

P. DELLA TORRE,
U. S. Attorney.
A. P. CRITTENDEN,
Attorney for Fossat.

Endorsed: Filed Aug. 12, 1857.

JOHN A. MONROE, *Clerk.*
Per W. H. CHEVERS, *Deputy.*

Deposition of Rufus C. Hopkins.

District Court of the United States, for the northern district of California.

THE UNITED STATES, Appellants,
vs.
CHARLES FOSSAT, Appellee.
} No. 132.

Rufus C. Hopkins, being duly sworn, deposes and says: that he is a clerk in the office of the United States surveyor general for the State of California, and as such has special charge and custody of the archives of the office; that there are in the office 579 espedientes on file, in relation to grants of land in California; that in these espedientes, from No. 1 to No. 200, the decrees of concession are signed by the governor in almost every instance; that from No. 200 to No. 260 perhaps one half or one third are signed; that from No. 260 to No. 320 there are none signed; and that the copy of the grant in the espediente is scarcely ever signed.

R. C. HOPKINS.

Sworn and subscribed before me, the 12th of August, 1857.

W. H. CHEVERS,
Deputy Clerk.

It is agreed that the within affidavit of R. C. Hopkins be admitted as evidence in this case, in like manner as if it were a deposition regularly taken.

P. DELLA TORRE,
U. S. Att'y.
A. P. CRITTENDEN,
Att'y for Fossat.

Endorsed: Filed Aug. 12, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Admission of U. S. Dist. Att'y.

District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
CHARLES FOSSAT, Appellee. } No. 132.

It is hereby admitted that the decree of concession, and copy of the grant to Justo Larios, which appear in the espediente now on file in the archives of the office of the United States surveyor general for the State of California, numbered 294, (and of which espediente a copy appears in the transcript in this case,) are in the handwriting of a person who was at the time the said decree and copy of grant respectively bear date a clerk in the office in which said instruments were made and properly deposited.

San Francisco, August 11th, 1857.

P. DELLA TORRE,
U. S. Att'y.
A. P. CRITTENDEN,
Att'y for Fossat.

Endorsed: Filed August 12th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion by Hon. Ogden Hoffman, Judge N. D. Cal.

THE UNITED STATES
vs.
CHARLES FOSSAT.

At the hearing of this case, the court entertaining no doubt upon the points presented, expressed verbally its opinion at the suggestion of the attorney for the claimants. I have committed to writing the subtance of the views then expressed.

The genuineness of the grant was not disputed.

The only questions discussed were as to the extent and boundaries of the tract granted. The land is described in the grant as known by the name of Capitancillos, bounded by the Sierra, by the arroyo Seco on the side of the establishment of Santa Clara, and by the rancho of citizen José R. Berreyesa, which has for a boundary a line running from the junction of the arroyo Seco and arroyo de los Alametos, southward to the Sierra, passing by the eastern falda of the small hill situated in the centre of the cañada.

The 3d condition states that the land herein referred to is one league de ganado mayor, a little more or less, and is explained by the map accompanying the expediente.

It had been urged to the court, in previous cases, that when the conditions of a grant mentioned the tract referred to as so many leagues, a little more or less, the latter words should be rejected

for uncertainty, and the quantity of land should be limited to the number of leagues mentioned. But this construction the court had refused to adopt. It was considered that the inquiry in these, as in other grants, was as to the intention of the grantor; and that the court could not attribute to him an intention to grant so many leagues, and no more in the face of his declaration that he intended to grant the specified quantity, a little more or less. It is not necessary now to recapitulate the various considerations upon which the court determined the question. It was of opinion that where the exterior boundaries of the land granted were designated with reasonable certainty, the mention in the condition of a certain number of leagues, more or less, as the quantity of land granted, should be considered as indicating an intention to grant the whole tract within the boundaries, provided the excess over and above the number of leagues mentioned was not so great as to indicate gross error or fraud; and that, as, under the former government, the ordinary unit of measurement was a league, the term more or less should at least be construed to embrace such fractional parts of a league as might be found within the boundaries. If no greater excess than some fraction of a league were found within them, it may deserve consideration whether such a mention of quantity should not be considered in all cases, except those of gross error or fraud, rather a conjectural estimate of the quantity previously granted than as a limitation of that quantity, and whether the grant should not be deemed, except in the cases referred to, a grant by metes and bounds or by boundaries.

It is enough, however, for the present, to say that this court has decided that, under the words more or less, such fractional part of a league, over and above the number of leagues mentioned, will , as may be contained within the boundaries described in the grant.

This point was not discussed at the hearing of this case, the district attorney being aware that it had already been passed upon by the court.

The questions more particularly debated were, whether this court had any power by its decree to designate the boundaries of the tract confirmed to the claimant, or whether the language of the grant must be adopted, leaving the location of the boundaries, and the identification of the natural objects called for, to the surveyor general.

2dly. What were the boundaries called for. As to the first point I entertain no doubt. The court is not, it is true, authorized by the act to designate the extent, locality, and boundaries of the granted land. This in the absence of a preliminary survey would be impracticable. But the determination of the validity of a claim to a particular tract of land necessarily involves an inquiry to a certain degree into the boundaries or the extent of the tract, the validity of the title to which is in question. If the court decrees that the title of the claimant is valid to a piece of land, it should by its de-

cree identify and designate that land, so that it may be known to what the claim is valid. But surely it is not only its right, but its duty, to construe, by the aid of evidence and argument, any ambiguity or uncertainty apparent on the face of the grant itself; and where the grant, as in this case, speaks of a Sierra as a boundary, to ascertain and declare what Sierra is meant, and to express in its decree that it confirms a claim to a tract bounded by a particular and specified Sierra, and not by such Sierra as the surveyor general may consider to have been intended.

The Supreme Court, in many of the cases brought up on appeal from this court, have entered fully and freely into the question of boundaries, and appear to have considered their determination not only as within their jurisdiction, but as an appropriate and important part of their duties.

The remaining question to be considered is, what boundaries were intended by the grantor.

The only one of those mentioned, the identity of which was debated, is the southern boundary mentioned in the grant as the "Sierra;" the point to be determined is, what natural object is meant.

The evidence shows that the tract called Capitancillos is a valley lying along the arroyo or brook; on the southerly side extends a range of low hills running from east to west. At their eastern extremity, where they are intersected by the Alamitos, these hills attain considerable elevation, but they decline in height towards the west, where they reach and are turned by the arroyo. Behind this ridge or Cuchilla the mountain chain or main Sierra raises itself to a great height, and is separated from the ridge of "Lomas Bajas," already spoken of, by the two streams mentioned, one of which turns the lomas bajas on the east, and the other on the west; and running behind the lomas bajas, and between them and the Sierra, and in a direction nearly parallel to the course of the former, these headwaters approach to within an inconsiderable distance of each other. Upon the slopes of the ridge of low hills, as well towards the valley on the north as towards the streams behind it on the south, the best or most permanent grazing is to be found; and in this ridge are situated the valuable quicksilver mines, the existence of which gives to this inquiry its chief importance.

The question is, is the Sierra mentioned in the grant the mountain chain to the south of the "Lomas Bajas," or is it the "Lomas Bajas" themselves?

If there were no other means of determining this question, the word Sierra itself by its necessary import, as well as from the evidence, which shows to which of these natural objects it was in fact applied, would leave little room for doubt. The natural and ordinary meaning of the term clearly points us to a great mountain chain, rather than to a ridge of low hill parallel to, but separated from it. The evidence is conclusive that such was the meaning and use of

the word, with reference to these particular natural objects; and that while the mountain range was known as the Sierra, the ridge of low hills was known as the Cuchilla, "la Mina de Luis Chaboya," or as the lomas bajas.

But the expediente furnishes more conclusive evidence in this case. The tract is described, as we have seen, as "of one league, a little more or less, as is explained by the map accompanying the espediente." On this map is found, rudely delineated, a mountain range, and this mountain range is inscribed Sierra del Encino, or of the oak tree. The Sierra mentioned in the grant is evidently, therefore, the Sierra del Encino, for that is the only Sierra delineated on the map.

The evidence discloses that there is on the main Sierra, or mountain chain, an oak tree of extraordinary proportions and striking appearance, situated on a spur or ridge of the mountain; it is a conspicuous and striking natural object from all parts of the valley, and for many miles around.

The photograph exhibited in court shows that its size and isolated situation are such as to strike the eye and arrest the attention of the most casual observer. Few who reside in that part of the country but are acquainted with the existence and situation of this tree, and it appears in the speech of many of the former inhabitants to have given a name to the Sierra on which it is situated.

If, then, as appears indisputable, the Sierra referred to in the grant be the "Sierra del Encino," the Sierra on which this oak tree is situated must be the one.

A still further confirmation of these views is derived from the map accompanying the expediente of Berreyesa.

The grant we are considering mentions as the eastern boundary of the tract granted the rancho of the citizen Jose R. Berreyesa, which has for boundary a line running from the junction of the arroyo Seco and the arroyo de los Alamitos, southward to the Sierra, &c. This line, thus dividing the two ranchos, had previously been a subject of dispute between the colindantes or neighboring proprietors. It was finally settled, however, by the government before the grants were issued, and a dotted line, indicating the boundary agreed upon by the parties, and fixed by the government, was made on the diseño of Berreyesa. This line is described in both grants in the same terms. That under consideration refers, as we have seen, to the rancho of Berreyesa as the boundary of Justo Larios, and then describes the line as the boundary of Berreyesa's tract.

The same inverted mode of description is used in the grant to Berreyesa. To determine what the boundary of Justo Larios' land is, we must, in literal compliance with the terms of the grant, ascertain the boundary of Berreyesa's land; and in ascertaining the latter we resort to the map on which the dotted line is marked. In Berreyesa's grant, as in that of Justo Larios, the line is described as extending to the Sierra, and as the ranchos were coterminous, and the eastern

boundary of the one is the western boundary of the other. The Sierra to which their common line of division extends must be the ame. On recurring, then, to Berreyesa's map, and the dotted line alluded to, all doubt is dissipated as to the range of mountains referred to.

On this map two ranges of hills or mountains are rudely but unmistakably delineated. They are separated by a broad valley, far broader than that actually existing, but indicating by its exaggerated delineation the discrimination in the grantor's mind between the ridge of low hills and the Sierra or mountain range behind it. The lower ridge is inscribed "Lomas Bajas," while the chain behind it, and distinctly separated from it, is inscribed Sierra Azul, from the hue which the mountains assume at a distance.

The dotted line, which by the grant is to terminate at the Sierra, is produced across the "Lomas Bajas," across the valley beyond them, and terminates at the Sierra Azul. There can thus be no doubt that the Sierra intended was the main Sierra or mountain ridge range. And as the western line of the land of Berreyesa extended to this range, the land of Justo Larios, which has the same line described in the same terms as its eastern boundary, must have the same extent.

The Sierra referred to in Justo Larios' grant must necessarily be the same as that referred to in the grant of Berreyesa; and as to the latter, there can be, as we have seen, no question.

Other considerations in support of this view might be urged; I think it unnecessary.

There seems to me no room to doubt that the Sierra referred to in the grant was the main Sierra described by the witnesses, and not the low ridge of low hills which has been attempted to be assigned as a boundary.

Endorsed: Filed September 2d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Decree.

No. 142.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
vs.
THE GUADALUPE MINING COMPANY, Appellees.

Stated term—June, 1857.

On appeal from the final decision of the Board of Commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court on

appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, the papers and evidence on which the said decision was founded, the petition of the appellants and answer of the appellees, and the further evidence given in this court, by leave of the court; and it appearing to the court that the said transcript has been duly filed according to law, and the appellees by their counsel in open court confessing error in the said decision of the board of land commissioners in this, that it does not describe in a manner sufficiently definite the boundaries of the tract of land intended to be confirmed to the claimants, and consenting that the said decision be reversed, and such decree be entered in this court as may be lawful and proper upon the whole evidence, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged and decreed, that the said decision of the board of land commissioners be, and the same is hereby reversed.

And the court now proceeding to render a new decree in the premises, it is further hereby ordered, adjudged, and decreed, that the grant made to Justo Larios, from whom the appellees derive their title, is a good and valid grant to said Larios of the place known by the name of "Los Capitancillos," situated in the present county of Santa Clara, and formerly occupied by the said Justo Larios, and bounded and described as follows, to wit: on the south by the main Sierra, on a spur of which Sierra is situated, as shown in evidence, a certain well known and conspicuous live-oak tree or "enciño," and a portion of which Sierra is separated, as shown in evidence, by the stream called the arroyo de los Capitancillos, from the range of hills called Cuchilla de la Mina, or Cuchilla de Mina de Luis Chabolla, in which are situated the quicksilver mines, known as the Guadalupe, San Antonio and New Almaden mines; on the west by the arroyo Seco, on the side of the establishment of Santa Clara, the said arroyo Seco being the continuation of the same stream above designated as the arroyo de los Capitancillos; on the east by a line running from the junction of a certain other rivulet, called arroyo Seco, and the arroyo de los Alamitos, southward to the aforesaid main Sierra, passing by the point or part of the small hill situated in the centre of the Cañada, which is designated in the expedientes and grants of Justo Larios and José Reyes Berreyesa as "la falda de la Coma," and crossing the range of hills designated above as the Cuchilla de la Mina, or Cuchilla de la Mina de Luis Chabolla, and in which are situated the said Guadalupe, San Antonio, and New Almaden mines, and which is the same range of hills designated "Lomas Bajas" on the diseño or map in the aforesaid espediente of José Reyes Berreyesa, the said

eastern line herein described being intended to be the same line agreed upon as the line of division between the lands of Justo Larios and José Reyes Berreyesa, as expressed in the respective espedientes and grants of said Justo Larios and José Reyes Berreyesa, and delineated by the dotted line on the said diseño or map in the espediente of José Reyes Berreyesa; in the location of the said line, reference to be made to the description thereof in the said espediente and grants, and the delineation thereof on the said diseño or map in the espediente of José Reyes Berreyesa, which espedientes, grants, and diseño or map, are on file and in evidence in this case; and the northern boundary of said tract of land granted to Justo Larios being the same which is shown in the diseño or map contained in the espediente of Justo Larios, which is on file and in evidence in this case: the said tract of land containing one square league, more or less.

And it is likewise further ordered, adjudged and decreed by the court that the claim of the appellees, the said Guadalupe Mining Company, to a portion of the said described tract of land, is a good and valid claim, and that the said claim be, and the same is hereby, confirmed. The land of which confirmation is hereby made to the appellees is all that portion of the tract of land granted to Justo Larios, and described above, which is composed of the two adjacent parcels thereof lying at the westerly end of said tract, and adjoining the land claimed by and confirmed to Charles Fossat, which parcels were conveyed to the said Guadalupe Mining Company by the two instruments of writing which are on file and in evidence in this case, and marked respectively "Exhibit M" and "Exhibit P;" the line dividing the land intended to be hereby confirmed to the appellees, the said Guadalupe Mining Company, from the land of the said Charles Fossat, being the same which is expressed in said exhibit to be the eastern line of the parcels of land thereby severally conveyed, and the same which is more particularly designated as the eastern line of the lands of the said Guadalupe Mining Company in the survey made by John La Croze, whose deposition, with the field-notes of said survey attached, is on file and in evidence in this case, and delineated as and for said eastern line on the map of said survey, certified by John C. Hays, U. S. surveyor general, which is also on file and in evidence, marked "Exhibit" J. M., "attached to the deposition of John La Croze," to which exhibits, map, deposition of John La Croze, and field-notes, reference is made for a more full description of the said line, which is the eastern line of the land hereby confirmed to the said appellees, the Guadalupe Mining Company.

August 17, 1857.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed August 17, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. THE GUADALUPE MINING CO. } D. C. 142.—L. C. 744.

In this case, on application of the United States attorney, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court without delay.

Endorsed: Filed August 19, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from one to four hundred and sixty-eight, inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion and decree filed in this office, in the case entitled The United States vs. Guadalupe Mining Company.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the eighteenth day of No-
[SEAL.] vember, A. D. 1857, and of the independence of the United States of America the eighty-second.

JNO. A. MONROE, *Clerk.*

Filed 21st April, 1858.